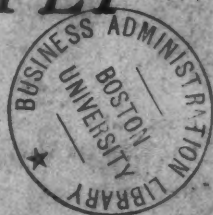


Public Utilities

FORTNIGHTLY



November 11, 1943

THE TVA—ITS EVOLUTION AND
REPRESENTATIONS

Part I.

By J. A. Whitlow

« »

The Air Age Ahead

By Oswald Ryan

« »

The Effect of Air Warfare on
Hydro Dam Building

By J. E. Bullard

« »

Social Reform Strengthens Its
Antidiscrimination Salient

By Larston D. Farrar

PUBLIC UTILITIES REPORTS, INC.
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with non-critical materials

no priorities required



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Public Utilities Fortnightly

VOLUME XXXII November 11, 1943

NUMBER 10

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Q This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.

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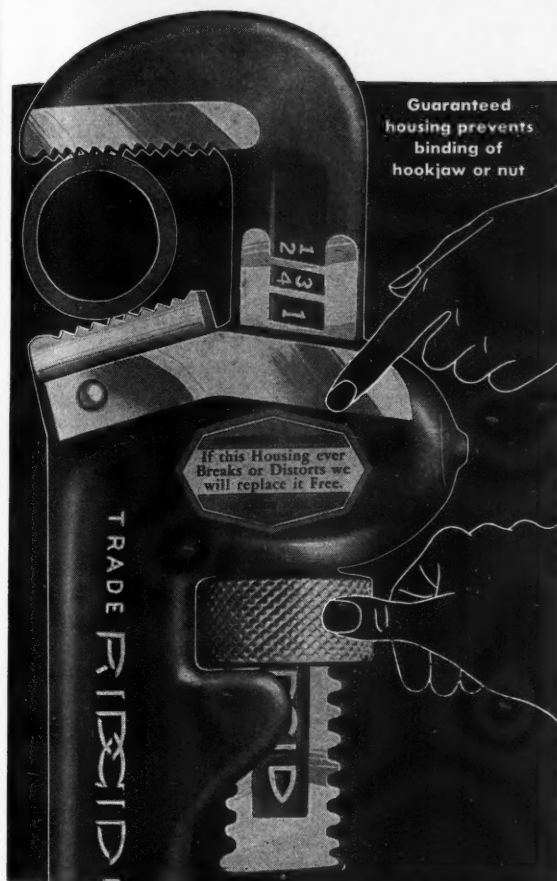
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NOV. 11, 1943

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and the Busy Peace that's Coming*



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Pages with the Editors

IF it were not too busy with important war work at the moment, the Tennessee Valley Authority would probably be taking more formal notice of the fact that the year 1943 marks its tenth anniversary. TVA has come a long way in a single decade. It has gathered strength and prestige. Some observers even see signs of a spirit of maturity, relatively conservative in tone for a government experiment in socialized industry, beginning to set in as TVA prepares to go into the second decade of its existence.

It hardly seems ten years ago since we heard former Senator Norris pleading with his fellow colleagues in the upper chamber to authorize a bare \$50,000,000 to establish the TVA. Today TVA expenditures have passed the half-billion mark and its projects harness the Tennessee river and its tributaries at more than a dozen places. TVA's legal victories during the first ten years of its life have also been impressive. It seems only yesterday when we heard TVA Special Counsel John Lord O'Brian concede in questioning before the U. S. Supreme Court that TVA operations of steam plants, as distinguished from hydroelec-



J. A. WHITLOW

Is TVA's success based on a record of equivocation?

(SEE PAGE 597)



OSWALD RYAN

The air age ahead requires deep consideration of regulatory as well as technological progress in aviation.

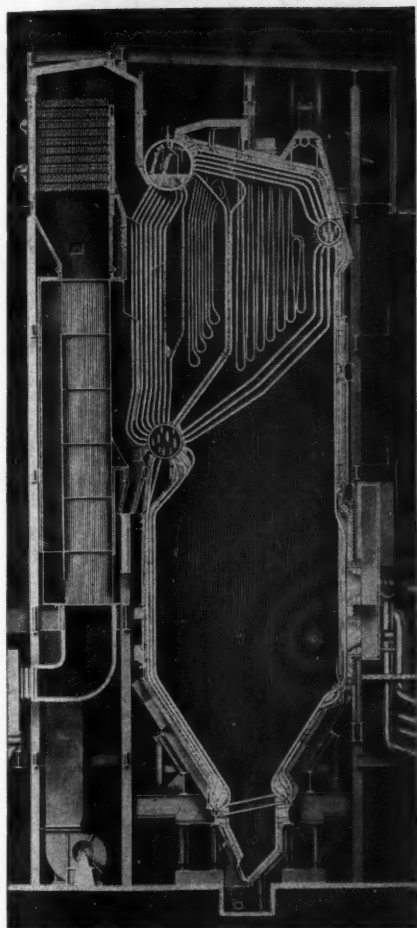
(SEE PAGE 605)

tric plants, would probably be constitutionally untenable. Today such concessions, in the light of TVA court victories, appear rather naive.

THE outbreak of World War II and our own eventual involvement undoubtedly helped TVA to consolidate its economic position; but, on the other hand, there is little doubt that the availability of TVA power in the Tennessee valley helped the impetus of our nation's war effort. It was a somewhat unforeseen marriage of convenience and necessity, so to speak.

Now that TVA has arrived and is definitely here to stay, we have reached a point where it is perhaps permissible to appraise this great experiment in the light of hindsight. Have the expectations of TVA advocates been justified? The first instalment of a somewhat critical analysis along this line begins in this issue of the *FORTNIGHTLY*, written by J. A. Whitlow, manager of the Tulsa district of Public Service Company of Oklahoma from 1923 to the present, and vice president and member of the board of directors of that organization.

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MR. WHITLOW was born and reared on a farm in western Missouri and after attending normal school and teaching for several years, he graduated from a course in electrical engineering at the University of Missouri, to which he later returned as assistant professor of electrical engineering. He has also served as chief engineer and acting commissioner of school buildings for the St. Louis board of education for several years. He had some experience as the head of the utility rate department of the Missouri Public Service Commission, and during World War I was an administrative engineer in Missouri for the Federal Fuel Administration. After World War I he served five years as operating superintendent and rate consultant with the Arkansas Power & Light Company before joining his present organization in 1923.

OSWALD RYAN, author of the article entitled "Regulation of Our Common Carriers of the Air," which begins on page 605, is at present a member of the Civil Aeronautics Board—the Federal commission which regulates interstate air carriers. But he undoubtedly will be more readily recalled by many of our readership for his tour of duty as general counsel of the Federal Power Commission, during which he took occasion to write a number of articles on the regulatory work of the FPC for this magazine.

MR. RYAN is an Indiana lawyer, writer, and former member of the European Immigration Commission, and honor student of Harvard from which he graduated in 1911. MR. RYAN later studied at Harvard Law School and was for a time a teacher of American history at Harvard University. Afterwards he plunged



LARSTON D. FARRAR

Problems of racial discrimination in employment are not being given a duration soft pedal.

(SEE PAGE 619)

NOV. 11, 1943



J. E. BULLARD

Are hydroelectric dams becoming obsolete in modern warfare?

(SEE PAGE 611)

into professional and civic activities in Indiana. He is a leader in the American Legion, of which he is a past national officer. He became general counsel for the FPC in 1932. He served at this post until his appointment to the CAB in 1938.

WHEN the RAF last May in a lightning attack destroyed the Eder and Moehne dams in the Ruhr valley in Germany, it touched off an argument which has been going at a lively pace ever since in both military and electric power industrial circles. The argument is simply this: Are hydroelectric dams becoming so vulnerable under modern methods of warfare that their further construction should command serious consideration of national defense factors? J. E. BULLARD in this issue (beginning page 611) gives us a thought-provoking discussion on this subject.

MR. BULLARD is a graduate of Brown University, PhD, '03, who, after considerable experience with the sales and managerial organizations of a number of public utility companies in the United States, decided upon his return from France after World War I to devote his time to free-lance writing, specializing in business articles. He now makes his home in Central Valley, New York.

THE next number of this magazine will be out November 25th.

The Editors

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11. Degree essential
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14. Under age or Over age



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PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 129-192, from 50 PUR(NS)

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SOOT BLOWERS

Last fall a check was made by Vulcan engineers on a soot-blower unit installed 4 years before in a twin furnace steam generator job at Oil City, Pa.

The engineers found that the unit had completed its 4th year of operation without one instance of servicing, repair, or maintenance having been required.

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sign of this boiler, involving new features in soot-blower design and construction, Vulcan engineers had inspected the installation regularly for many months. But the engineering was sound. No trouble of any sort developed. Operators reported perfect cleaning, reasonable cost — and VULCAN Soot Blowers were again specified on a duplicate steam generator installation!

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Remarkable Remarks

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—MONTAIGNE



JOSIAH W. BAILEY
*U. S. Senator from North
Carolina.*

"If there is extravagance in government, it is our [Senate's] fault."

WILFRED SYKES
*Vice president, National Association
of Manufacturers.*

"I think there is evidence that when the struggle ends for the troops it will begin for free enterprise."

RAYMOND MOLEY
Associate, Newsweek.

"What the world needs is not the unitas or any other unit of international currency that Henry Morgenthau might think up, but an honest dollar that would produce trade."

ERIC JOHNSTON
*President, U. S. Chamber of
Commerce.*

"... we were thoroughly agreed that the biggest problem will be that of mass unemployment after the war. But while he [Harold J. Laski, Socialist writer] would solve it through socialism, I would do it with free enterprise."

JAMES LAWRENCE FLY
*Chairman, Federal Communica-
tions Commission.*

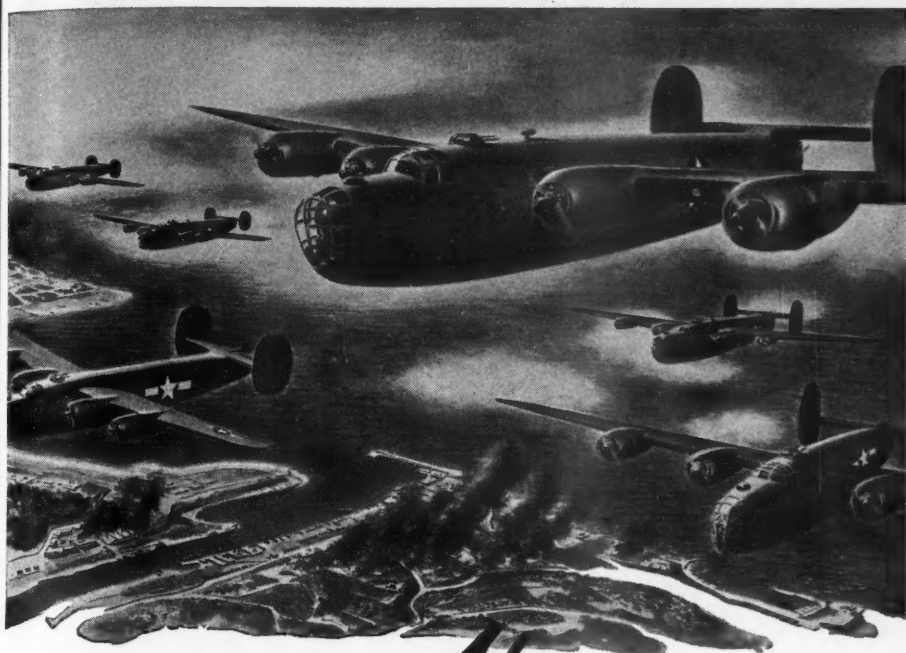
"Radio is that necessary catalyst upon which we shall rely to bring about a more sympathetic understanding among peoples. It would be harmful beyond prediction to have world radio restricted either by hiding behind a restrictive world policy or by allowing any individual national to go further and adopt restrictions of a more mechanical kind."

ASHTON B. COLLINS
*Writing in the Edison Electric
Institute Bulletin.*

"Businessmen have not learned how to get publicity. They have not learned how to make news. But government people are doing this while supplying only 13 per cent of the electricity of the United States, while you [electric companies] are furnishing 87 per cent. I wonder what kind of story they could make of it if they had the 87 per cent and you the 13 per cent."

EDITORIAL STATEMENT
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"What our free-thinking, liberal zealots fail to understand is that the radio audience—practically the entire nation—was not built by the FCC or its predecessor, or those who run the labor unions or big business, or the geniuses who devised the spectrum allocation. Rather it was built by the broadcasters. They built the programs and were sensitive to the wishes of the people. Radio must present a balanced programming structure, not a babble of voices preaching, shouting, or lobbying."



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REMARKABLE REMARKS—(Continued)

EDWARD V. ROBERTSON
U. S. Senator from Wyoming.

"We are fighting not for democracy; not for four, or five, or a dozen freedoms. We are fighting for our very existence as a nation."

EDITORIAL STATEMENT
The Hartford Courant.

"... long-range planning at long distance is unwise. No matter how much care the bureaucrats may exercise, they cannot see a situation so clearly as local experts."

FREDERICK C. CRAWFORD
President, National Association of
Manufacturers.

"Given freedom of communication, we can freely pool our knowledge and theories. We can thresh out differences in debate; we can work out formulas for conciliation and coöperation. Without a free press, there can be no free political system. Without a free press, there can be no free economic system. American industry, when it reaffirms its faith in competition, thereby asserts its faith in something even bigger than this system of free enterprise which has created the American standard of living."

EDITORIAL STATEMENT
Chicago Daily News.

"The much-clouted 'Power Trust'—or rather, the privately owned utility companies—is doing the bulk of the war job. Despite the hundreds of millions spent since TVA was established on government power plants and districts, the private outfits have five times the generating capacity of the governmental power districts, and last year generated 157,680,800,000 kilowatt hours of electricity compared to 19,732,900,000 generated by TVA, Bonneville, Grand Coulee, and the other government power outfits, big and little."

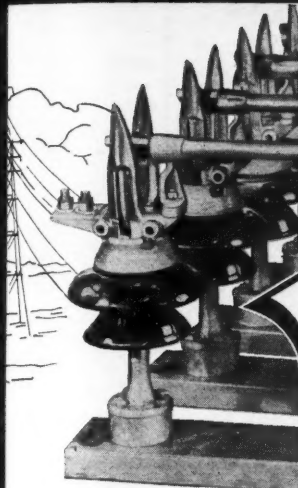
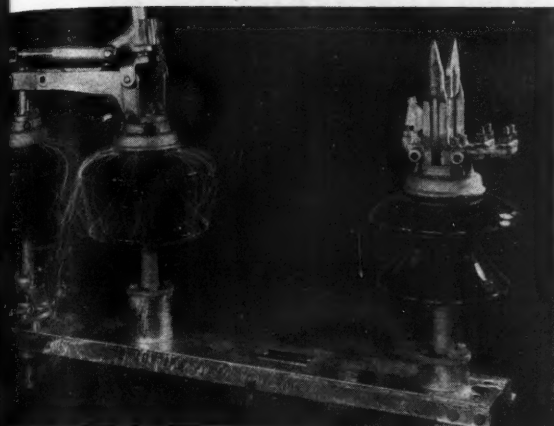
WILLIAM M. CARPENTER
Economist, Edison Electric
Institute.

"... the outlook for the electric light and power industry during the immediate postwar years is becoming the subject of a steadily increasing confusion. Intrigued by the possibilities of the extraordinary technical progress of recent years, the public has lost sight of the fact that all permanent change comes slowly, that the momentum is so great that fundamental trends still persist, and that most of these new discoveries are competitive, either with each other or with existing applications—and all of them are more efficient."

EDITORIAL STATEMENT
The Wall Street Journal.

"If private capital owners shall feel that our national [postwar] domestic policy is to be based upon private enterprise as its foundation, and that government's attitude toward private enterprise is to be at least sympathetic, there will be no reason why this cannot and will not do the job that is to be done. If they shall doubt this, if they shall feel that our policy is to be antipathetic to private effort, and that it leans toward a policy of suspicion or repression, they will naturally shrink from the risks of an all-out campaign of private enterprise."

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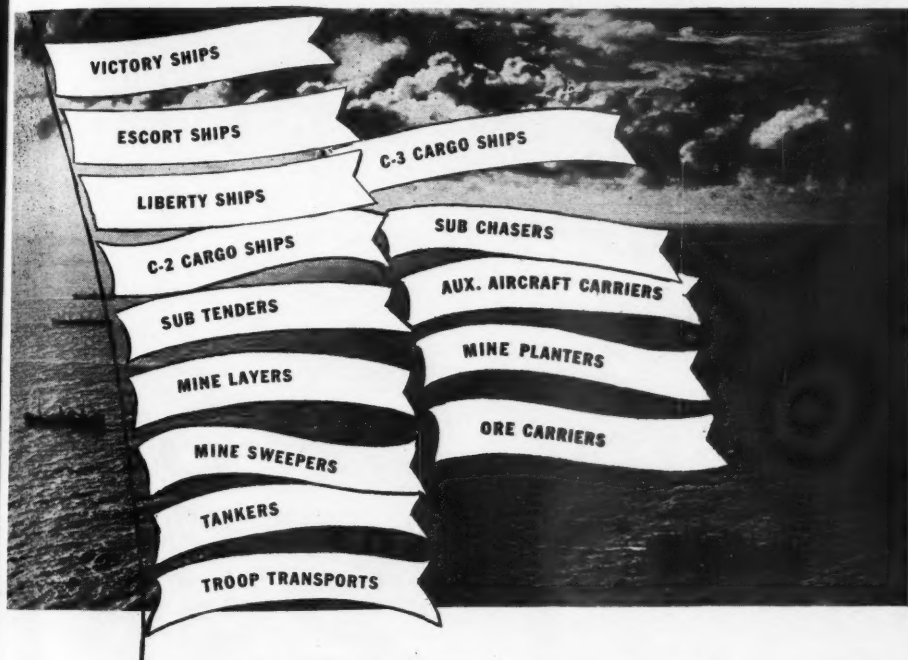
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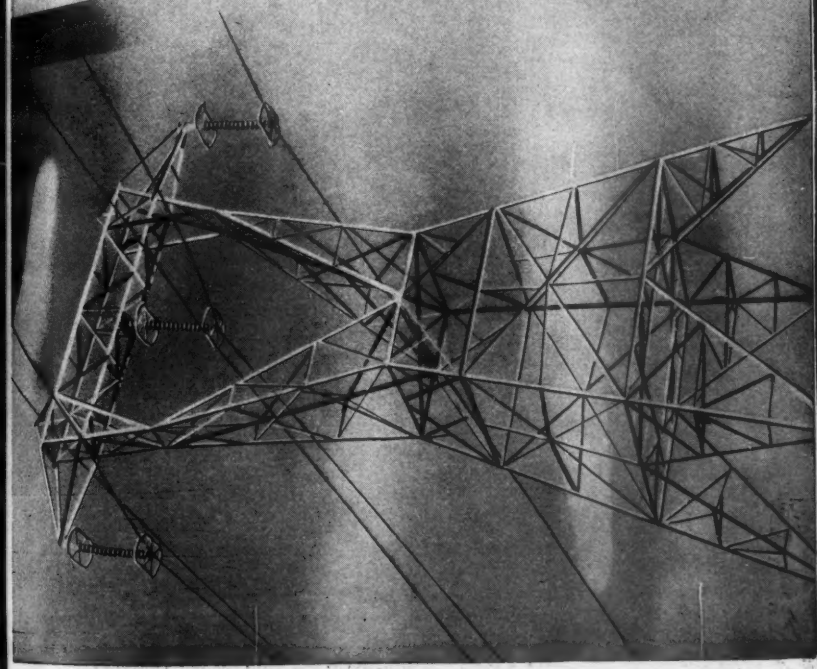


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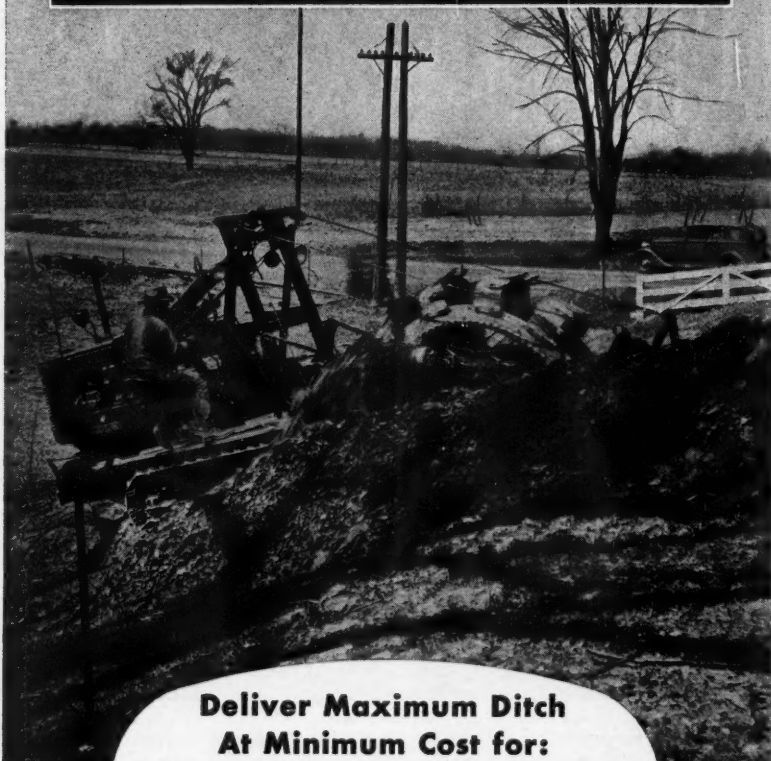
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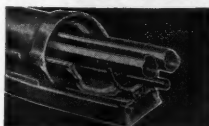
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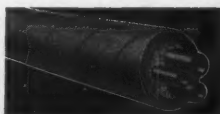


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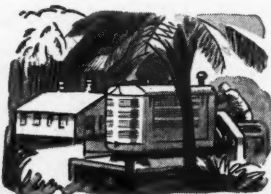


RIC-WIL INSULATED PIPE CONDUIT SYSTEMS
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AGENTS IN PRINCIPAL CITIES

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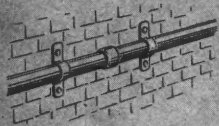
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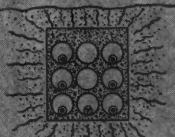
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PRESSURE GAGES. Should be checked periodically with a master gage.

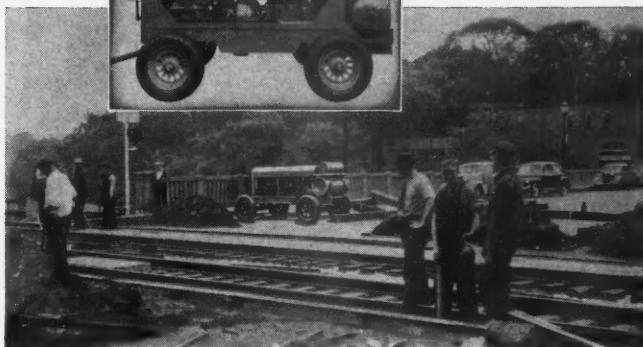
★
SAFETY VALVES. Keep them clean and in working order by blowing at least once a day.

★
PACKINGS. Keep all packings on air joints snug enough so that no air is wasted through leakage.

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FAN BELTS. V-belts should be tight enough to prevent excessive slippage but not as tight as a flat belt used under similar conditions.

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ENGINE SPARK PLUGS. Keep the electrodes clean and spark gap properly adjusted. Never attempt to bend the center electrode as this will crack the porcelain.

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1. RUGGEDNESS. The outstanding characteristic of EVERY Davey Compressor is the ability to "take it" and come back for more in any CLIMATE or on any JOB. From the smallest pin to the heavy gage steel frame, every part of a Davey Compressor is designed and built so that, like a mountain locomotive, it always has a reserve of rugged endurance to get you "over the hump."

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INVEST IN VICTORY...
BUY MORE WAR BONDS



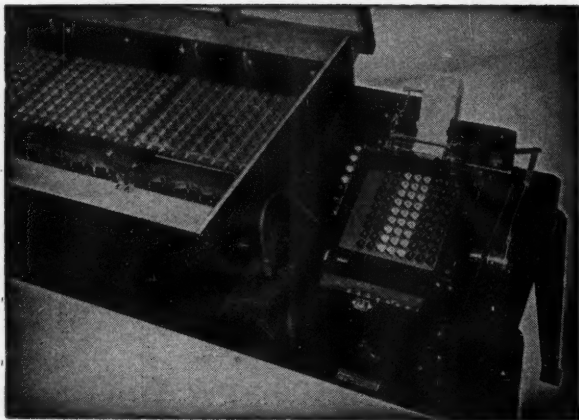
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KANSAS CITY	KMBC	Tues., Thurs., Sat.

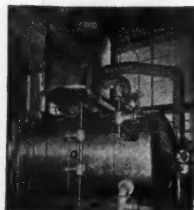


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THE SLAMMING ROAR OF THE BIG GUNS

is dulled to heavy thuds, in the strained quiet of below decks, while the big battlegwagon rolls to the recoil of tons of metal starting their flight toward the enemy. In the ship's power plant there is a tensify, a supreme watchfulness of equipment, dials, indicating instruments, and a split-second response to orders transmitted from above. Engineer officers, their staffs and their equipment are winning the battle just as surely as the men at the fire-control stations. In the stress of battle, there must be no power failure.

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Utilities Almanack

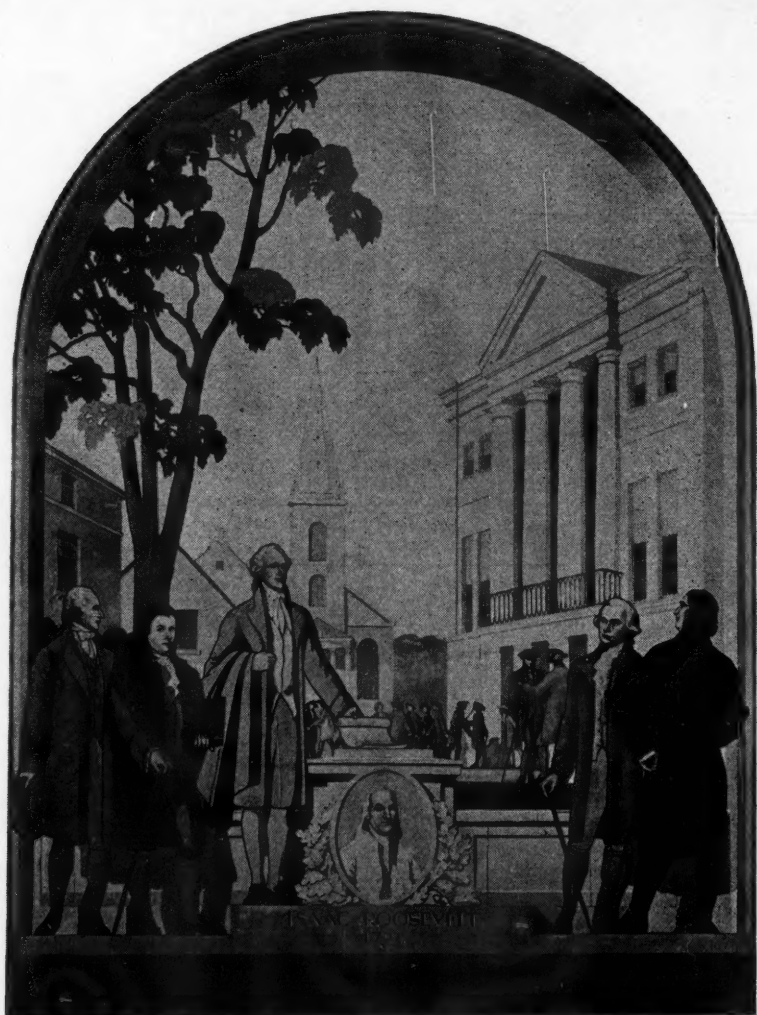
Due to war-time travel restriction, conventions listed are subject to cancellation.



NOVEMBER



11	T ^a	¶ South Carolina Independent Telephone Association concludes meeting, Chester, S. C., 1943. ☺
12	F	¶ Highway Research Board of National Research Council will hold meeting, Chicago, Ill., Nov. 29, 30, 1943.
13	S ^a	¶ Oklahoma Telephone Association will hold meeting, Oklahoma City, Okla., Nov. 29, 30, 1943.
14	S	¶ American Society of Mechanical Engineers will hold annual meeting, New York, N. Y., Nov. 29-Dec. 3, 1943.
15	M	¶ Alabama Independent Telephone Association opens meeting, Montgomery, Ala., 1943.
16	T ^u	¶ Arkansas Municipal League convenes, Little Rock, Ark., 1943.
17	W	¶ Alabama League of Municipalities starts meeting, Birmingham, Ala., 1943.
18	T ^a	¶ American Water Works Asso., Florida Sec., starts meeting, Fort Lauderdale, Fla., 1943. ¶ New Jersey State League of Municipalities convenes, New York, N. Y., 1943.
19	F	¶ American Society of Agricultural Engineers will hold fall meeting, Chicago, Ill., Dec. 6-8, 1943. ☺
20	S ^a	¶ National Tax Association starts session, Chicago, Ill., 1943.
21	S	¶ Exposition of Chemical Industries will be held, New York, N. Y., Dec. 6-11, 1943.
22	M	¶ American Water Works Association, Virginia Sec., starts meeting, Roanoke, Va., 1943.
23	T ^u	¶ National Association of Manufacturers will hold second War Congress of American Industry, New York, N. Y., Dec. 8-10, 1943.
24	W	¶ American Standards Association will hold annual meeting, New York, N. Y., Dec. 10, 1943.



A mural by J. Monroe Hewlett, reproduced through courtesy of the Bank of New York

In this painting are shown Alexander Hamilton (center foreground), who has just received the bank's charter from Governor Clinton (facing Hamilton at right), Jeremiah Wadsworth, Comfort Sands, and William Seton—all prominent in the organization of the Bank of New York. The medallion portrait represents Isaac Roosevelt, president of the bank from 1786 to 1791.

Public Utilities

FORTNIGHTLY

VOL. XXXII; No. 10



NOVEMBER 11, 1943

The TVA—Its Evolution And Representations

PART I

The author, in this part of his discussion, points out how, in his opinion, the Federal government's Tennessee project was developed into a great power enterprise by pretense and indirection—misleading propaganda as to the legal and tax situation.

By J. A. WHITLOW

VICE PRESIDENT, PUBLIC SERVICE COMPANY OF OKLAHOMA

IN the discussions and controversies of today in reference to government dams and government participation in the field of electric power, there are many references to the first notable venture of this kind by the government, the Tennessee Valley Authority, commonly referred to as TVA. It was here that Congress first announced a comprehensive plan. A great many claims are being made as to this con-

gressional policy and to the actual administration of the project, and the results thereof. It is being used as the keystone for the promotion of other projects of the same nature, so it seems appropriate to review briefly the history of this project.

The Muscle Shoals dam on the Tennessee river, where it dips down into northern Alabama, was started and partially completed, in accordance with

PUBLIC UTILITIES FORTNIGHTLY

an act of Congress, during World War I. The purpose of the project was "... for the production of nitrates and other products for munitions of war and useful in the manufacture of fertilizers..." Great quantities of electric power were needed for these purposes, so the dam and hydro plant were started at this location which possessed many natural advantages.

While the dam was under construction, two plants for the actual manufacture of nitrates were constructed near this location, each involving a different process. It was evident these nitrate plants would be ready long before the dam was finished, and the hydro power, when developed, would be subject to variations in the flow of the river, so a steam plant was also built by the government near Muscle Shoals, of approximately 60,000 kilowatts of capacity. The nitrate plants and the steam plant were about completed when the armistice was signed, but the dam and hydro plant were not finished till several years later.

IN the interval following the war there were many propositions advanced for the use of these properties. We will not attempt here to discuss these. Senator Norris was instrumental in presenting to Congress several proposals for the production of electric power from Muscle Shoals and one of these which contemplated the U. S. government operating the project for the production and sale of electric power was passed by Congress but vetoed by President Hoover. The following is an extract from his veto message:

This bill would launch the Federal government upon a policy of ownership and operation of power utilities upon a basis of

competition instead of by the proper government function of regulation for the protection of all the people. I hesitate to contemplate the future of our institutions, of our government, and of our country if the preoccupation of its officials is to be no longer the promotion of justice and equal opportunity but is to be devoted to barter in the markets. That is not liberalism; it is degeneration.

In his campaign speech at Portland, Oregon, September 21, 1932, Mr. Roosevelt said:

The development of utilities should remain, with certain exceptions, a function of private initiative and private capital.

Mr. Roosevelt also proposed that the government should develop for power purposes such places as Muscle Shoals, the St. Lawrence river, the Columbia river, and Boulder dam, in order to have a "yardstick" with which to measure the fairness of the rates of electric companies.

Soon after Mr. Roosevelt took office, Senator Norris again introduced a bill creating a corporation to be known as the Tennessee Valley Authority which was to assume a large responsibility in the Tennessee watershed. This bill passed Congress and was immediately signed by the President.

THE objectives of this act are set out in the title in the following language:

AN ACT To improve the navigability and to provide for the flood control of the Tennessee river; to provide for reforestation and the proper use of marginal lands in the Tennessee valley; to provide for the agricultural and industrial development of said valley; to provide for the national defense by the creation of a corporation for the operation of government properties at and near Muscle Shoals in the state of Alabama, and for other purposes.

With all the controversy that has raged about the electric power activities as a result of this bill, it is significant

THE TVA—ITS EVOLUTION AND REPRESENTATIONS

that the above statement of purposes did not mention the development of electric power, and it can only be considered as included in the all-embracing phrase, "and for other purposes." The act itself has been amended from time to time and as it now exists, the board is directed (§ 9a) "to regulate the stream flow primarily for the purposes of promoting navigation and controlling floods." In this same section it is provided that the board may "provide and operate facilities for the generation of electric energy . . . to avoid the waste of water power."

Section 10 of the act gives the board power to "sell the surplus power not used in its operations, and for operation of locks and other works . . ." In this same section and in some succeeding sections it is provided that in the sale of this "surplus" electric power, preference shall be given to "states, counties, municipalities, and coöperative organizations" and may enter into 20-year contracts with them, and surplus power above these commitments may be sold to private companies or individuals but in such case the board shall have power to cancel such contract on five years' notice.

In all the TVA Act there is no provision for building a dam for any purpose other than the regulation of stream flow for navigation and flood protection. The act goes to considerable length in

defining the duties of the board in connection with these purposes, and for the production of fertilizer and coöperation with farmers, farm organizations, agricultural agents, and colleges, and for the production of explosives, but electric power is never spoken of except as "surplus" power.

Test of Constitutionality

ALTHOUGH Congress in the TVA Act had announced that the primary purpose of any dam was to control the waters for navigation and for flood control, and in doing this any surplus electric power could be sold, it very early became evident that the directors were intent on extending the production of electric power far beyond any requirements for disposing of surplus power.

The Muscle Shoals steam plant was put in full operation and plans were immediately made and put into effect for the building of high dams where the primary rather than secondary purpose was to produce electric power. There was no immediate market for this power as the entire area was being adequately served by electric companies that had been unusually active in promoting the sale of power, development of wide residential use, and service to industries. These companies had brought about the use of domestic electricity far above the national average



"THE Muscle Shoals dam on the Tennessee river, where it dips down into northern Alabama, was started and partially completed, in accordance with an act of Congress, during World War I. The purpose of the project was ' . . . for the production of nitrates and other products for munitions of war and useful in the manufacture of fertilizers . . . ' "

PUBLIC UTILITIES FORTNIGHTLY

and the rates were correspondingly low.

TVA agents went about the area meeting with city authorities and voluntary groups, promoting a sentiment for government ownership. They built transmission lines into areas or up to cities in advance of any arrangements either for sale to the electric companies for distribution, or to the city itself. The authority promulgated a rate schedule with which the companies could not compete because the authority obtained its money, interest free, by direct appropriation from Congress, and because it was practically tax free. This all developed into a great controversy and litigation was inevitable.

THE first important test in the courts was what is known as the Ashwander Case.¹

The Alabama Power Company had agreed to sell to TVA certain properties desired by TVA. Ashwander and some other stockholders of the company protested this purchase by TVA as exceeding its constitutional powers and that it was going beyond its delegated duties and was making the production and sale of electricity a prime purpose rather than incidental to those prime purposes set out in the act itself.

The officers of TVA had in fact expressed themselves in a manner that seemed to have committed them to this theory. The chairman of the board, Arthur Morgan, had said:

There are a dozen other sites which, if in fifteen years we run short of power, could be utilized . . .

And David E. Lilienthal, another member of the board, had written for the *Chattanooga News*:

These dams are not built for scenic effect; these millions of dollars are not being spent merely to increase business activity in this area. The dams are power dams; they are built because they will produce electric power.

Another official seemed to have forgotten the importance of navigation and flood control and referred to the dams as valuable for power production "with valuable *by-products* in flood control and navigation." Comments were being made in Congress, in the press, and elsewhere that the whole country was being taxed to subsidize low electric rates in the Tennessee valley.

THE TVA was defended in the Ashwander Case by U. S. Solicitor General Stanley Reed, now a member of the U.S. Supreme Court. The government's lawyers were genuinely alarmed at the dangers to their power program and in pleading their case acknowledged that while flood control and navigation were proper governmental functions, the government had no constitutional power to enter into the production and sale of electric power except as incidental to those other purposes; but they pleaded that the acquisition of these properties was proper in order to provide a market for the sale of the *surplus* electric energy. The Supreme Court upheld this view and permitted the purchase of the properties, but with the following forceful statement in reference to government's right to produce electric power:

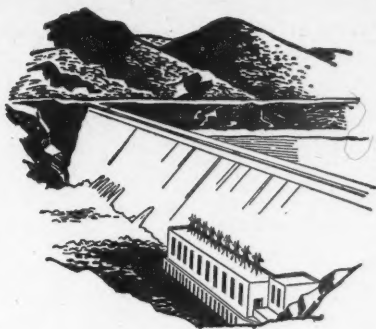
Power may be sold in the competitive market if produced at dams built by the government in pursuance of certain constitutional objectives, such as navigation improvement, flood control, and the like.²

Power may not be sold if produced at dams which were built for the sole purpose of manufacturing power.

¹ (1936) 297 US 288, 80 L ed 688.

² (1936) 297 US 288, 80 L ed 688.

THE TVA—ITS EVOLUTION AND REPRESENTATIONS



Provision in TVA Act for Surplus Power

"IN all the TVA Act there is no provision for building a dam for any purpose other than the regulation of stream flow for navigation and flood protection. The act goes to considerable length in defining the duties of the board in connection with these purposes, and for the production of fertilizer and coöperation with farmers, farm organizations, agricultural agents, and colleges, and for the production of explosives, but electric power is never spoken of except as 'surplus' power."

This decision seemed to clear the way for a real test of the constitutionality of the acts of TVA in constructing dams and other facilities that were quite evidently *not* incidental to acknowledged constitutional powers of navigation and flood control, but were either utterly remote from such purposes or relegated them to a position incidental to power. Such a suit was instituted by a group of electric companies in this southeastern area and known as the Sixteen Power Company Case.

WHEN this case finally came to the Supreme Court and decision was rendered, the court made no pronouncement on the main issue in the case but simply dismissed it with the statement

that these companies were not the proper parties to bring the suit, even if they suffered irreparable damage from the competition.³ This merely left the case open to question only by the states or governmental agencies; but as this is not likely to happen, the position of TVA and all the other TVA's either established or proposed seems to be immune from any real test.

The power companies were left in the position of accepting such price for their properties as TVA was willing to pay, or facing competition of a government agency with unlimited subsidies. Sales were gradually effected until TVA now is practically supreme in the state of Tennessee and some contiguous counties in adjacent states in the pro-

³ (1939) 306 US 118, 136, 27 PUR(NS) 1.

PUBLIC UTILITIES FORTNIGHTLY

duction and transmission of electric power. Its true constitutional status has never been determined and perhaps never will be.

A great majority of the public never followed these cases at the time, or have forgotten the results. TVA and its advocates or defenders, in their policy of revealing only half-truths where they lead to conclusions favorable to TVA, have allowed or promoted the opinion that TVA has stood the constitutional tests. In recent articles published in the press one says: "The United States Supreme Court on two occasions upheld the TVA Act" and another says, "Twice the U. S. Supreme Court ruled against the private companies." These appeared on the same day in widely separated places, and it is reasonable to assume they had a common source. They give the impression that TVA has stood a true test of its legality which as we have seen has not occurred and may never happen.

The Tax Situation

THE original TVA Act (1933) provided that the authority should pay to the states of Tennessee and Alabama 5 per cent of its gross revenues derived from the sale of power generated in each state. This had many drawbacks. This payment in lieu of taxes was apportioned to the states and left the counties without tax revenue to replace that lost when company plants and properties were taken over. The total tax was very slim, because TVA paid this 5 per cent on its sales which were at wholesale rates, while the companies had been paying about 17 per cent on their retail sales. This resulted in TVA paying a tax bill of \$45,347 in 1936, whereas one electric company

alone, the Tennessee Electric Power Company, paid \$2,339,034 that same year. TVA by that time had acquired property and funds amounting to \$380,000,000. The company had assets less than one-third that amount. Professor Ransmeier, in his history of TVA, says, "... the financial position of some of the valley counties became so critical that there was threat of imminent suspension of essential public services . . ." This result came about not only because the electric properties had passed into the nontax-paying class but also because from 5 per cent to 35 per cent of the taxable land in some counties had been overflowed by the lakes created.

There were insistent demands that these government properties be made to pay taxes. Bills to require municipal utilities purchasing power from TVA to pay taxes were repeatedly presented to the Tennessee legislature but were opposed by managements of these municipal systems and failed to pass. Finally Congress recognized this condition, much to the dismay of TVA's friends. Senator Norris declared that if TVA were required to pay equivalent taxes it would be out of business in three months. This constituted quite a confession of the famous "yardstick."

IN 1940, Congress finally amended the TVA Act to require TVA to pay an increased amount to replace local ad valorem taxes lost when TVA took over electric company properties. These were mostly outside of cities, as the cities themselves had acquired ownership of the distribution systems. It was provided that the amount so paid should equal the average of the tax paid the last two years by the "power prop-

THE TVA—ITS EVOLUTION AND REPRESENTATIONS

erty" and by the land "related to dams," and this should be paid both to the state and to the counties that had suffered.

TVA was required to pay 10 per cent of its gross revenue to meet this tax bill, but as it was assumed that TVA's revenue would increase it was also provided that this percentage would decrease from year to year until at the end of eight years, it would be back to 5 per cent.

It is easily seen from this that the plan is to have TVA merely restore the ad valorem taxes for only the amount that was lost at the time the power company properties were taken over. Nothing will be gained by TVA's growth. If these properties had remained in the hands of the electric companies, they would have been subject to the increasing assessments as the company and the business grew. The companies would also have had to pay any state or Federal excise taxes that are or might be levied such as sales taxes, income taxes, excess profits taxes, etc. These taxes account for the heavy increase in the tax load of the electric companies over the nation, but all of this is lost in Tennessee, so TVA and its satellites, therefore, make no tax contribution to the war effort.

TVA requires the cities that enter into contracts for electric power

for their municipal systems to set up a tax item also equivalent to the ad valorem tax paid on electric property within the city, when these distribution systems were owned by the power companies. This is supposed to be apportioned to the state, county, city, and schools. As a matter of fact, with perhaps one exception, the local systems make no payments, but TVA includes such "accrued" taxes in the reports it sends out in its annual reports or propaganda. For instance in its abbreviated report for the fiscal year 1942, TVA states it paid \$1,859,416 in lieu of taxes in Tennessee and the five other states where it affects some counties, and that in addition its distributors "accrued \$1,843,576 as taxes or tax equivalents." (*Italics supplied.*)

TVA is now a huge system. Compare this with some business-managed electric companies of similar size, that pay all the taxes now levied on such corporations, and we find that the total tax paid and "accrued" by TVA and its distributors amounted to about \$3,700,000, while the Pacific Gas and Electric Company paid a total tax bill for the same year of around \$21,000,000, or 24 per cent of its gross revenue. TVA's revenue from power operations that same year was \$25,329,954, so its tax payment of \$1,859,416 was only 7½ per cent of its revenue.



Q"THE Muscle Shoals steam plant was put in full operation and plans were immediately made and put into effect for the building of high dams where the primary rather than secondary purpose was to produce electric power. There was no immediate market for this power as the entire area was being adequately served by electric companies that had been unusually active in promoting the sale of power, development of wide residential use, and service to industries."

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THE electric companies over the nation paid taxes in about the same proportion as the company mentioned above. If TVA had paid 24 per cent of its gross revenue as taxes it would have paid \$6,079,189, or an increase of \$4,219,773 as its contribution to local government and to the war program. This difference between 7½ per cent and 24 per cent is 16⅔ per cent and therefore the exemption from taxes the companies pay enables TVA's yardstick to be 16⅔ per cent lower than it should be because of tax exemption alone. This is in addition to exemption from interest on the money used to build up TVA.

In addition to TVA's exemption from payment of most of the taxes that electric companies are required to pay, the same applies to the cities and co-operatives that purchase power from TVA for resale to their customers.

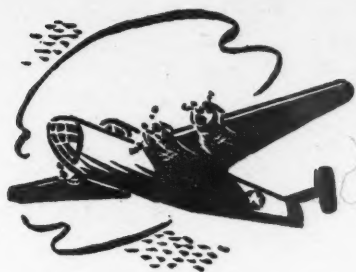
The Tennessee Taxpayers Association has made some studies of this tax replacement matter for that state and it finds that the counties and cities are generally getting full tax replacements, which we explained above is only equal to the ad valorem tax formerly collected from the power companies. The state, however, is receiving only a partial tax replacement.

IN its contracts with municipalities, whereby it sells power to a municipal system, which in turn distributes to its citizens, TVA requires these distributors to resell at the retail rates fixed by TVA. This is so low that the cities do not usually have a surplus after the prescribed costs are paid, and therefore have nothing to supplement the city's revenues. If such a surplus

exists it is TVA's desire that instead of diverting this into the city general fund, the rates should be still further reduced. This has created much dissatisfaction among the cities that thus distribute TVA power and they resent this dictation over the conduct of their local enterprise. Lenoir City pledged its electric revenue to the payment of principal and interest of some of its refunding bonds, and agreed to charge rates sufficiently high to meet these payments. TVA has brought suit asking that this action be declared a violation of the city's contract with the authority and therefore unconstitutional and void under the obligation of contracts of the Federal Constitution.

The city of Chattanooga proposes an increase of \$205,000 in education funds to raise the substandard salaries of teachers. The electric power board of that city declines to allow financial aid to the city. In some of the Chattanooga press it is estimated the city has lost \$38,871 per year by the transition from company to city operation of the electric system, and further estimated this loss will reach \$159,484 for 1943, the fourth year of city operation. This local press explains that while Chattanooga is benefiting by the lowest electric rate in the U.S. some of the saving is coming out of the pockets of the taxpayers. The city commission has proposed to raise extra money by a levy on automobiles and motorcycles. Citizens have called attention to the provision that exempts the power board from paying taxes on a new office building, a new equipment plant, or any future extensions although they receive police, fire, street, garbage, and other services.

To Be Concluded in the Next Issue.



The Air Age Ahead

Development of civil aviation in the postwar period will be far beyond anything that has gone before; and its regulation, in the opinion of the author, because of the national character of the service, is a Federal, rather than a state, problem, the function of the states being promotional and developmental rather than regulatory.

By OSWALD RYAN

MEMBER, U. S. CIVIL AERONAUTICS BOARD

WE can see but dimly the things to come; but we can see clearly enough to be able to predict a development in air transportation in the postwar period far beyond anything that has gone before.

This is not a fantastic prophecy. The present war has provided a stimulus to aeronautical research and the advancement of the art of flight which has packed into a brief period a technical advance which would have required decades of peace to accomplish. This war has become a gigantic laboratory of experiment and discovery in the field of aviation. The air lines, from necessity, are still using the same types of aircraft which had been in use during the past five years. But those planes are already obsolete; and our domestic and international air lines only wait upon the manufacturing capacity, which will become available

at the close of the war, for the modern aircraft that will enable them to carry the air commerce of this nation and a fair share of the air commerce of the world.

There will also be available to air transportation of the postwar future millions of trained aviation personnel who will have graduated from the present war. Millions of pilots, mechanics, navigators, meteorologists, and other ground personnel will be knocking at the door of civil aviation when the time comes to convert this American invention from an instrument of destruction and death to an agency of commerce and of peace. There will also be those expanded airport facilities which have been constructed as a part of the war program and which will be available to civil air transportation at the close of this war. Finally, millions of Americans will

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have been educated to the unique advantages of air transportation. This war is opening up the air to the man in the street; millions are learning for the first time of the unique advantages of air transportation.

IF we Americans are to keep abreast of the other nations, if we are to preserve our proper place in the forefront of the world's economic and social power, we must be prepared for the air age ahead. We must have an aviation program more comprehensive than we have had in the past; we must have a greater vision than we have ever had before.

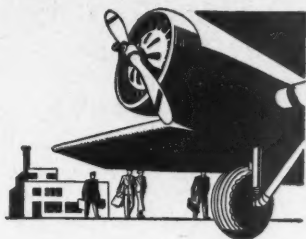
Now this anticipated development is certain to bring with it important problems; among them being one in which the lawyers of the nation will have a special interest and a special responsibility. That is the responsibility of seeing to it that the public and private law which will guide and control the civil aviation of the future shall develop in such a way as to best advance our national progress. Justice Cardozo, when a member of the New York bench, once wrote: "The law, like the traveler, must be ready for the morrow; it must have a principle of growth." The law that governs aviation must be ready to adapt itself to revolutionary developments; it must contain the "principle of growth." If American aviation is to attain its maximum usefulness to our nation and is to become the effective servant of the people, it must have not only the aid of the aeronautical engineers to design the aircraft of the future and the aid of the air transportation pioneers to build the air map of the future; it must also have the assistance of the law

pioneers to guide the public law of the future so that the controls of law and government shall serve and not impede the national interest.

THE legal problems will be numerous and important. There will be problems of private law, such as aviation liability; and there will be problems of public law involving administrative regulation. One of the most important among the latter concerns the question whether air transportation shall develop under regulatory controls provided by Federal law or under dual regulatory controls provided both by Federal and state law.

Those of us who have been engaged during the past two decades in the field of public utility and transportation law have been witnesses to the epoch-making conflict between the Federal government and the states in the regulation of public utilities and rail transportation. We saw two systems of regulation—one Federal and one state—grow up side by side. We saw too often the great public service industries that were regulated by them burdened by wasteful duplication of regulatory activity and by interminable conflict and litigation over jurisdictional questions. Some of these jurisdictional controversies did not affect favorably either the public interest or the private interests that were involved. Every effort should be made to insure that such a fate shall not befall air transportation.

We should approach this problem both as a matter of law and policy upon the basis of the factual situation. If the facts show that air transportation is local and not national in character, those problems will be revealed as local



Future Aviation Program

"IF we Americans are to keep abreast of the other nations, if we are to preserve our proper place in the forefront of the world's economic and social power, we must be prepared for the air age ahead. We must have an aviation program more comprehensive than we have had in the past; we must have a greater vision than we have ever had before."

problems and their solution will call for state and not national action. If, on the other hand, air transportation is found to be inherently national, then both wise policy and sound law would call for national action and a single, unified regulation.

WHEN Justice Holmes, in the migratory bird case, was confronted with the contention of the state of Missouri that the exercise of Federal power then under review was a violation of the Tenth Amendment to the U. S. Constitution (which reserved to the states all powers not delegated to the United States or prohibited to the states) he said: "We must consider what this country has become in deciding what that amendment has reserved." We shall be wise to consider what this country has become in the field of aviation in deciding what place should be reserved to the states in the

aviation picture and what part the Federal government should play.

Upon that approach, the first fact which confronts us is that air transportation differs in its very nature and in its history from any other form of transportation or public utility enterprise. Other public industries, with a single exception of radio communication, began as local enterprises and later developed interstate activities which brought them under Federal as well as state regulation. Thus, rail transportation in its beginning was not primarily a national activity; it was many years before the great trunk lines appeared; and this is probably one reason why Congress did not require certificates of public convenience and necessity for new railroad expansions until as late as 1920. Motor transportation also began as a local enterprise; our great interstate motor lines of today developed at a later time.

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AGAIN, the giant power industry, with its \$17,000,000,000 of assets, had a similar history. When I was admitted to the Indiana bar in 1913, the typical power utility was that which generated electric energy in a local plant and distributed that energy in the local community. The distribution and sale of electric energy to factory, home, and farm was a local problem, and state regulatory action was entirely adequate to solve it. Years later, in 1935, I had occasion as general counsel of the Federal Power Commission to present to committees of the Congress the new power map which had developed in the nation; that map disclosed a radical change in the situation as it had appeared in 1913. The local isolated electric plant had been swallowed up by the great interstate power systems that came with the postwar development. The local distributing system now received its supply of electric energy from huge generating transmission networks that lay beyond the borders of any one state. Over 160,000 miles of high-tension transmission lines spread like a network across political boundaries of sovereign states; and over that interstate network more electric energy flowed in interstate commerce in 1935 than was generated in the entire United States in 1913.

The engineers, inventors, and scientific men had taught electric energy to ignore the political boundaries of sovereign states and sound policy called for the exercise of Federal jurisdiction to protect the public interest in that development.

AIR transportation has had a different history; and the difference

is a matter of significance. From the very beginning air transportation has been a national rather than a local enterprise. By reason of its great speed and mobility and the fact that it was not limited by mountain or ocean barriers, the airplane was never limited to local operation. There are probably not five states in the Union today which cannot be traversed in a couple of hours' flying time. Air transportation is a long-distance transportation. The average passenger trip by air is nearly 400 miles in length while the average passenger trip by rail is less than 50 miles in length. That is one reason why there is not a single scheduled air line operating today whose operations are confined to a single state.

Thus air transportation is national in character. It will be much more so in the period of expansion which is ahead of us. It is a matter of common knowledge that, as previously stated, the aeronautical research which is producing the high speed military planes of this war has already rendered obsolete the passenger planes now in service. The air lines of the United States await only the availability of the materials and plant capacity to make an advance in speed which will far exceed anything heretofore known.

AIR transportation is not only national in its operational characteristics; it is national in the sense of the deep concern which the nation has in its development. The activities of civil air transportation in this war have shown how intimately this industry is bound up with the national security. That is why Congress, in the Civil Aeronautics Act of 1938, declared the

THE AIR AGE AHEAD

national policy to be the building up of an air transportation system which would be adequate to the needs of our commerce, our postal service, and our national defense.

Here then is the factual situation which should supply the answer to the question whether air transportation should develop under Federal regulation. If air transportation is national in character, it would seem to be an economic absurdity to subject it to the economic regulations of 48 different states. Up to the present time it has been treated, comparatively speaking, as a Federal problem. It should be noted, however, that while the jurisdiction asserted by Congress in the Civil Aeronautics Act of 1938 is plenary with respect to safety, giving to the Civil Aeronautics Board regulatory power not only over interstate air commerce but over all air navigation that directly affects or may endanger interstate air commerce, nevertheless the board's jurisdiction over the economic phases of air transportation under the act is not so broad. It clearly has the jurisdiction over the economics of the airlines so far as they engage in interstate air commerce, but it is very doubtful whether the act confers upon this board the power to regulate the economic aspects of intra-

state air transportation even though it may directly affect or burden interstate commerce.¹

IN view of the factual situation which exists in this field of air transportation, it is reasonable to assume that there would be no question as to the constitutional power of Congress to assert a complete jurisdiction over the entire air transportation picture which can be anticipated in the postwar period. It is well established that whenever intrastate and interstate transactions of a public service enterprise are so related that the regulation of one involves the control of the other, it is Congress and not the state that is authorized by the Constitution to prescribe the final and the dominant rule by which commerce is governed. That principle of constitutional law applies with special force to air transportation, for here the intrastate operations are so intermingled with the interstate operations that the interstate operations cannot be effectively regulated unless both are brought within a single policy.

¹ The pending Lea bill HR 1012, proposes to confer upon the Civil Aeronautics Board exclusive jurisdiction to impose safety regulation on all flying and exclusive economic regulatory jurisdiction over all point-to-point commercial air operations between the United States and foreign countries.



Q "... air transportation is national in character. It will be much more so in the period of expansion which is ahead of us. It is a matter of common knowledge that ... the aeronautical research which is producing the high-speed military planes of this war has already rendered obsolete the passenger planes now in service. The air lines of the United States await only the availability of the materials and plant capacity to make an advance in speed which will far exceed anything heretofore known."

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These constitutional principles are well established by many decisions under the Commerce Clause of the Constitution. In this connection it is not unlikely that an analogy may be recognized between the navigable air space of the United States and the navigable waters of the United States. It will be recalled that the paramount power over the navigable waters of the U. S. for more than one hundred years has been recognized by the high court to reside in Congress. The basis for this jurisdiction has been recognition of navigable waters as instrumentalities of interstate commerce.

EVER since *Gibbons v. Ogden*,² we have known that if a body of water, whether it be a river or lake, carries, or is capable of carrying, commerce among the states, that body of water is a navigable water of the United States and as such is subject to the paramount power of Congress to regulate commerce. Since the great navigation decisions, there has appeared another navigable medium—the air space above this nation; and that navigable air space is carrying, or is capable of carrying, within its medium commerce among the states and with foreign nations. It will be argued with some force that there is no distinction in principle between these two navigable media since both con-

stitute highways over which commerce is carried or may be carried.

It is true that the means of navigating the air space of the country were not developed until after the turn of this century. But the Constitution of the United States is not an inflexible document adaptable only to the conditions of the age which gave it birth; it is rather a living charter, having within it the "principle of growth" and being capable of embracing the navigable air space over the nation as well as the navigable waters that flow upon its surface.

IT does not follow from what has been said that the states have no important contribution to make to the progress of air transportation. But the states' function should be a promotional and developmental rather than a regulatory function. The individual states have a great opportunity to encourage and foster activities for the advancement of aviation. They may and should participate in the establishment of airports and in the promotion of civil aviation. It would also seem that the individual states can render important services by assisting in the enforcement of the Federal Civil Air Regulations relating to safety in aviation. The states and the nation can thus march shoulder to shoulder toward the common objective of the sound advancement of aviation in the postwar period.

² (1824) 9 Wheat 1, 6 L. ed 23.

Q "It is clear that if the government's policy is to be one of hostility to private ownership, it could, through the application of pressure, establishment of prices and regulations, bankrupt any business in the country."

—JOSEPH W. MARTIN, JR.,
U. S. Representative from
Massachusetts.



The Effect of Air Warfare On Hydro Dam Building

Vulnerability, evidenced by the successful breaching of two hydroelectric dams in Germany by the RAF, is likely to be increased with the further development of bomber range and "precision mining" so as, in the opinion of the author, to make us think twice about spending huge sums for such power projects in the name of defense.

By J. E. BULLARD

ON the night of May 16, 1943, a score of RAF Lancaster bombers, each carrying nine three-quarter ton mines, attacked two hydroelectric dams in western Germany. They were led by Wing Commander Guy P. Gibson, VC, since dubbed "the dambuster" by Prime Minister Churchill. The targets were the Moehne dam in the Ruhr-Rhine river basin, and the Eder dam in the Eder-Wiser basin. Three Australian and two Canadian flyers participated in the otherwise all-British mission.

Discounting possible damage by eight of the planes before they were shot down, the remainder of the bombing mission must have unloaded some seventy tons of high explosive mines on these targets. The results in a general

way were well publicized in the press at the time. Press photographs released by British Information Service showed a break nearly 300 feet wide in the center of the Moehne dam to a depth of apparently 50 feet. Eder was breached, judging from less clear photographs, about 200 feet wide and so deeply as to lose all of her stored water capacity.

Other damages reported on and otherwise known to accrue from this attack were as follows: About 50 miles of valley below Moehne and 30 miles below Eder were flooded up to 4 feet for half a day. All of this area is a heavy industrial center, including one city, Kassel (population 200,000), which stands just below the Eder. This is not a devastating flood as floods go

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and quite brief as we count floods along our own Mississippi watershed. But it did undoubtedly damage much surface equipment (bridges, highways, etc.), especially because of its suddenness, aside from serious interruption of much war activity for the Reich.

The electric power production at Moehne dam was not large, compared with American or other European hydroelectric operation, but that was purely coincidental. Moehne developed only 9,000 horsepower and was only operated a few hours a day. It had a head of 110 feet. Its principal function was navigation, flood control, water supply.

EDER dam feeds, directly or indirectly, four power plants totaling some 200,000 horsepower. The degree of damage to the electrical installations is unknown, but we can be reasonably sure that operations were interrupted and will remain seriously curtailed until next spring, regardless of prompt repair and no RAF return visits—a totally unwarranted assumption.

Reason? Simply the loss of the stored water. The Moehne-Eder raid was perfectly timed to climax the rainy season for western Germany. All during spring, the excess rainfall is annually collected in these dams; but, beginning with June, the normal usage exceeds the refill until (barring a few weeks in early fall) the return of the heavy run-off in January. The RAF knew just when to hit the jackpot. And the pot can't fill up again properly until next winter (assuming prompt repairs and no RAF encores, as aforesaid). This means some 200 towns and villages had to look elsewhere for adequate water supply last summer.

The Mittelland canal, important east-west link in Germany's intricate inland waterway system, was knocked out for three weeks and is still reported to be functioning erratically through the low-water period. Dams further downstream and other power supply, coördinated with or equalized in their operation by Moehne and Eder, were known to be off balance. All told, it was a good night's bombing for the RAF, matched only, in its relative destructive effect, by the selective low-level bombing of the Ploesti oil fields in Rumania by our own American Army Air Force.

BUT before we congratulate ourselves too heartily on this remarkable feat, let us ponder whether there is not a serious lesson in it for us here in America. As this war progresses, it is becoming more evident we ought to think twice about spending huge sums of money on hydroelectric power projects in the name of defense. Germany appears to be learning this lesson the hard way. There is reason to believe it will be taught to Italy and Japan.

Already, war planes are shuttling back and forth across the Atlantic. Flights are being made in the Pacific to attack enemy positions which would have been safe from air raids only a few years ago. Amazing progress is being made in all fields of aviation. If another war comes after this one, no spot on earth will be beyond the reach of attack by enemy air forces. All the air-raid precautions being taken in these United States and all the drilling being done under the sponsorship of the government indicate a possibility still exists of an air attack by Germany or Japan on our cities.

THE EFFECT OF AIR WARFARE ON HYDRO DAM BUILDING



Wise World Photos

EDER DAM DAMAGE

The RAF Bomber Command's attack on the German dams on the night of May 16, 1943, did enormous damage to the Nazi power system and war economy. In spite of the strained labor situation in Germany intensive preparations are under way to repair the damage done by the RAF bombers. This is strong evidence of the importance attached to the Eder dam by the enemy since it means the diversion of men from other war work. This reconnaissance photo of the Eder dam was taken on August 17th, three months after the successful attack. This picture is a close-up of the now dry dam.

Moehne and Eder were breached by mines not bombs. These were doubtless adjusted for underwater detonation, which increases their destructive effect. This means that they must have been released at very low altitudes, less than 100 feet, in order to place them along the upstream curve of the dam (both Moehne and Eder were curved, gravity-type dams) which, perhaps, accounts for the high degree (40 per cent) of plane loss.

This difficult maneuver was probably made necessary by progress which has been made in air-raid defense for hydro dams during and before the present war. Antiaircraft guns, mounted strategically, make ordinary high-level release of the unwieldy "dunking" mines so inaccurate that an effective mission almost demands that the bombers streak in over the target at such a low altitude that reasonably wide-awake gun crews are almost bound to

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make some kind of a bag. The early idea of dropping propeller or other driving or floating mines upstream with the object of having them move down to the apron under their own power can be easily exploded by the simple device of placing nets or weir guards upstream, resulting in premature and harmless explosion.

WHILE "dam busting," however, is costly business in this war, it is almost certain to be perfected in the next. And we may yet see, even in the present conflict, an adoption of precision bombing to the business of destroying dams. It's pretty certain that if bombs can be dropped by precision method on sights for high altitude, it is only a question of time and mechanics before "precision mining" can be accomplished the same way. When that technique comes along, we can kiss the dams goodbye in any first-class war. They are "born targets," so to speak. A lone bomber under such circumstances might conceivably account for a small dam all by itself.

The recently budding technique of "skip bombing" suggests that torpedo bombs might be effectively exploded against the downstream face of the dam. By concentrating such skip bombing at one shoulder end of a curved, gravity-type dam, it might be possible (in the case of some smaller dams) to "unhinge" the dam, letting the water pressure in the reservoir complete the "opening" tear, pretty much in the manner of a body leaning against an unlatched gate. Earth-filled dams are reported to have certain peculiar points of vulnerability. In short, "dam busting" as an air-war specialty is still in its infancy.

NOV. 11, 1943

As stated, a successful air raid on a hydro dam is not comparable with the bombardment of a fuel-generating power plant where injured equipment can be repaired or replaced quickly, restoring production. When a hydro dam has been breached it means not only that the walls of the reservoir must be repaired, but, if the impounded waters have been lost, it also means waiting for an entire season of rainfall so that the run-off can build up sufficient head to operate the turbines efficiently.

HYDRO dams are particularly vulnerable because if their reservoirs are breached they become like a wash boiler or kettle with a hole in it. The entire thing becomes useless until the hole has been sealed and the vessel refilled. It is unnecessary, therefore, to pulverize or destroy any great portion of a hydro dam. Systematic puncturing of the apron or of the retaining abutments, sufficient to let the reservoir water escape, is all that is necessary. Nature does the rest.

Another feature of vulnerability with respect to hydroelectric dams is the fact that they cannot be hidden and are so easily found. A fuel-generating plant can be hidden anywhere around the countryside, protected by camouflage or other buildings. They can even be constructed underground if necessary, as was the case of some generating units in the Maginot line.

But it is elementary that one cannot build a hydro dam any place but on a river. It is such a wide-open, obvious thing, after it is built, that an enemy bombardier would have to have pretty poor eyesight to miss it. Needless to say, modern bombardiers do not have bad eyesight. All that is necessary is to



Vulnerability of Hydro Dams

“HYDRO dams are particularly vulnerable because if their reservoirs are breached they become like a wash boiler or kettle with a hole in it. The entire thing becomes useless until the hole has been sealed and the vessel refilled. It is unnecessary, therefore, to pulverize or destroy any great portion of a hydro dam. Systematic puncturing of the apron or of the retaining abutments, sufficient to let the reservoir water escape, is all that is necessary. Nature does the rest.”

find the river which is the easiest ground clue a pilot can pick up, since it shines like a silver ribbon at night and is even more obvious in the day. The pilot, therefore, needs only to fly up the course of the river until he finds the first dam, then start banging away.

WHEN the question of the vulnerability of hydroelectric dams to bombardment was raised back in the middle 30's when our own Federal government was authorizing so many of our own vast projects in the United States, civilian administrators and promoters were inclined to scoff. They have argued that the vertical target exposed to enemy aircraft was so small, relatively, that any dam reasonably protected by anti-aircraft fire, to keep the bombers high, would be even safer than the flat top of a powerhouse.

Furthermore, they have argued that

the monolithic construction is of such a rugged type it would take a ground crew of expert sappers working day and night without distraction to do any real damage to such massive structures.

While there may have been good grounds for such argument in the middle 30's we know better today. Such arguments were compounded before the days of precision bombing and “block busters.” A well-aimed “block buster” can destroy in a few seconds the concrete pouring of a couple of months, as far as structural integrity is concerned.

Needless to say, our own military authorities are already concerned about those vast targets in our own country. Recent testimony before congressional committees shows that Japanese planes have already invaded our skies in the neighborhood of Oregon, seeking to start forest fires. A U. S. Army officer

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recently pointed out that Japanese planes, flying in a great circular route from a Kurilea island base could, without great difficulty, come into the state of Washington east of the Cascade mountains and do their bombing under protective covering of the cloud banks which frequently hover over the crest of that range.

SUCH facts, added to the high cost of hydroelectric developments, except under the most favorable conditions, pretty well demonstrate the danger and doubtful wisdom of further overdevelopment of such plants. Let it be granted that these giant hydro plants have been of welcome assistance to the sudden demand for power for war production.

Conversely, the war program has been a godsend in "bailing out" a number of these projects which otherwise would have had surplus power begging for normal markets. But unforeseen and accidental benefits should not blind us to the dangers of the future through further commitments along this line. We would be in a safer position today, from a defense standpoint, if this same power was being produced from fuels. Further, the fuel-generating plants would have cost much less and, if privately developed, we would have some tax money in the Treasury to show for them.

When we are considering attack by air, we must not forget that before another war can be started, not only will "dam-busting" techniques be improved as already noted, but cruising distances of planes will be greatly increased. As we have seen, rivers are easy to follow, either day or night. Dams stand out because they are so clearly outlined by

the water areas. Why then is it not time for us to reexamine the nature of our commitments to building of hydro dams in the light of these clear prospects. Obviously, we are not going to tear down dams already built. But should we build new ones as postwar "public works"? Should we not rather take steps to supplant our present heavy dependence on hydro dams with fuel plants—just in case?

BUT aside from this danger there always have been eminent power engineers who doubted the economy of any hydroelectric developments. They have held that the progress being made in steam power, internal combustion engines, and other prime movers may be so great as to eliminate any possibility of actual net earnings from water power over the length of life of the dams. The life of an average dam, we must remember, is very long—a century, according to conservative amortization.

From a defense point of view, all arguments are in favor of other than water-power plants. In the first place, if a steam-power plant is destroyed during an air attack, its demolition does not release the tremendous power of destruction which is stored up in large reservoirs back of dams. The power plant may be gone but only those other buildings which are directly destroyed by bombs are damaged beyond immediate repair. Replacement units held in readiness can make restoration of service a matter of hours. Also, as we have seen, it is possible to build a steam, internal combustion engine or internal combustion turbine power plant which is bombproof. This can be done by tunneling into a mountain or

THE EFFECT OF AIR WARFARE ON HYDRO DAM BUILDING

hillside and excavating a large enough space for installing the machinery.

Germany probably still has planes which could be flown to this country with bomb loads, drop their explosives, and return. Each Allied raid made on Germany, however, lessens the possibility of such a raid on her part being attempted. There appears to be somewhat greater danger of a Japanese raid on our western coast. Not until the end of the war will the danger be entirely eliminated.

JAPAN and Italy have not had much choice in the type of power plants they construct. Both nations have to import fuel. Each has good water-power resources. Their dependence upon water power makes their war industries far more vulnerable than most of our industrial centers are. This is our good fortune and our air forces are, doubtless, going to make the most of it. We can expect to read of many more dams being blown up in Italy, Germany, and Japan. But we should not turn this good fortune into a liability by further unnecessary commitment in the same field.

Here, in the United States, we enjoy a greater choice of the power we will use than most other nations do. We have petroleum resources, vast de-

posits of coal. We have natural gas which is being piped to more and more sections of the country. We have developed steam power to a high degree of efficiency and most of the materials needed in a steam-power plant, including the special alloys in high-pressure steam, we produce here, from the mining of the ore to the finished product.

Our problem is not that of developing power sources which are limited. It is finding and deciding upon the particular type of power plant which will serve the purpose best in peace and in war. The technical progress being made in improving the efficiencies of all methods of transforming the heat in fuels into electricity makes water power less and less attractive from the investment point of view. The investment which has to be made in any water development is high per kilowatt hour of capacity. Variations in stream flow require steam plants on the system if the maximum number of kilowatt hours per year are to be generated by water. All the water available during the year has to be used for power purposes and the steam plants must take care of that part of the load the water power cannot carry.

PERIODIC floods have a way of causing more or less extensive damage



Q "... a successful air raid on a hydro dam is not comparable with the bombardment of a fuel-generating power plant where injured equipment can be repaired or replaced quickly, restoring production. When a hydro dam has been breached it means not only that the walls of the reservoir must be repaired, but, if the impounded waters have been lost, it also means waiting for an entire season of rainfall so that the runoff can build up sufficient head to operate the turbines efficiently."

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to water developments. Low water cuts down the power generated and determines the minimum capacity which has to be provided in steam. In a given system, it could happen that the total cost over the life of the steam plants is greater than it would have been had there been steam plants alone. Therefore, high-grade engineering is required in drawing up plans and making estimates whenever and wherever water power is under consideration.

There are three essentials in the case of defense power just as there are in the case of peace-time power. First, there must be an ample supply. Second, there must be a continuous supply not subject to interruptions or shortages. Third, the power must be produced at as low a cost as possible. Hydro, relatively speaking, does not meet any of these tests in adequate fashion.

Steam, also, enjoys another decided advantage. New capacity can be added in the minimum of time and at the minimum of cost. Had we been dependent primarily upon water power

for generating electricity in this nation, it is probable we would have experienced power shortages before this because of the rapid increase in power demands, not to mention sectional droughts. New steam plants, however, can be built or the capacity of present ones increased in the time it takes to build new factories or to increase the demand of present ones.

During the past decade, another possibility in the case of steam plants has been in the course of development. That is the disposal of waste products in industries. Some of these which would prove a serious problem are now being burned in steam plants. Among the first wastes to be used as fuel is sawdust. Waste gases generated in industrial processes, rectified "sour" gas (heretofore a waste), are coming to serve as fuel.

The prospects are that much greater progress will be made in this direction in the coming years, especially as by-products from plastic processes increase as expected.

Twenty-eight U. S. Dams Top Ruhr's

THOUGH the Moehne and Eder dams, destroyed by the RAF, are among the largest in Europe, they are midgets compared with some of the huge water barriers in the United States. At least twenty-eight dams in this country top the capacity of the two in the Ruhr district, according to the National Geographic Society.

Boulder dam on the Colorado river creates 115-mile-long Lake Mead, with 125 times the capacity of both German reservoirs. Grand Coulee's lake has 37 times the capacity.

The Moehne and Eder dams might be classed, in storage capacity, with New York's Kensico and New Croton dams, with the Shannon dam on the Baker river in Washington and Seattle's Diablo on the Skagit.



Social Reform Strengthens Its Antidiscrimination Salient

The new Federal Fair Employment Practices Committee, under the new chairmanship of Norman Ross, former deputy chairman, faces some delicate employment problems—public and private—and, in the opinion of the author, the committee will need a lot of new employees, if it is to function efficiently and extensively.

By LARSTON D. FARRAR

THE optimists in the field of utilities, manufacturing, and business generally who felt that recent activities of Congress would put a crimp in the social reform under the cloak of war would do well to look around more carefully at certain developments which have been taking place in Washington lately.

Although Congress has fought hard to regain some of its powers, and although the people generally have shown some mass recognition of the perils of bureaucracy, many observers point out that the army of office holders still controls the present home front situation, by dint of the very confusion that has been generated. In short, with some 2,250 different government agencies with which to work, the men who are running the show in Washington have a pretty broad field for making general progress along the lines they desire. For every avenue of ap-

proach that is blocked, there are a number of alternative routes, not to mention detours.

An interesting case study along this line is the President's Fair Employment Practices Committee, which was the subject of an analytical article in a recent issue of PUBLIC UTILITIES FORTNIGHTLY.¹ At the time the former article was written, it was apparent that the FEPC was torn with internal dissension, faced with a battle in the very agency—the War Manpower Commission—in which it was operating, and making little headway against the outside problems it ostensibly was set up to cure. These problems, it might be repeated in passing, are to remove discriminations (in wartime employment) based on creed, color, and race. For obvious reasons, accent has been on the Negro problem.

¹ "Are Utilities a Proving Ground for the Race Question?" June 24, 1943, issue.

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Then came the Beaumont (Texas) race riot and rumors of other riots. Still later came new demands from leaders of militant minorities, which vote in blocs. All the time, other bureaus in the government were being cut down by congressional action. Something had to be done, critics of the administration say, to fulfill three purposes:

(1) Give jobs to stalwarts who had been cut off in other agencies.

(2) Convince certain minorities that the administration was in earnest about helping better their lot in the middle of the war.

(3) Give the professional "liberals" a new agency to bless, and thereby perhaps offset administration retreat on other reform fronts.

ON May 28th, President Roosevelt abolished the old FEPC and immediately formed a "new" FEPC. By Order No. 9346, which amended Executive Order No. 8802, President Roosevelt reaffirms the government's policy of "no discrimination" in war industries or in government because of race, creed, color, or national origin. He also gives to the new agency greater and more clear-cut powers over utilities, manufacturers, and other businesses classified as "war industries."

President Roosevelt issued the new order not only as President, but also as Commander-in-Chief, which was interpreted by many as giving the new committee more power than the original one. He named the Right Reverend Monsignor Francis J. Haas as chairman of the new committee, succeeding Lawrence Cramer, who left the agency to become an officer in the U. S. Army.

At the same time, the President took FEPC out of the War Manpower Commission and made the new agency a branch of the "Office for Emergency Management of the Executive Office of the President." Haas has since resigned to become Bishop of Grand Rapids. His assistant, Norman Ross, was his successor.

Just how much money was allotted annually to the new committee out of the President's personal funds was not disclosed, but it must have been considerable, for no sooner was the new committee announced than did employment begin in earnest. Whereas Mr. Cramer had struggled along for almost two years with less than 40 employees, the new committee within several weeks had 66 employees and was making plans to staff 12 regional offices with an estimated total employment roll of 125 persons.

It might be noted in passing that, if the experience of other new agencies holds true with the FEPC, no one will be able to put a ceiling on the number of persons that agency will employ. The average agency that estimates it will need 150 persons almost invariably ends up with twice that number. However, many observers are somewhat skeptical that the job the committee is undertaking could be accomplished with a million employees. These people express themselves in this way: "The old FEPC found it impossible to police all the millions of cases of discrimination taking place in America each day. It had 30-odd employees and could not take up more than one case a week, on an average. With, say, 150 employees, can the present committee take up more than one case a day?"

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This would be only 365 cases of discrimination a year solved. At the same time, other millions of discriminatory actions would have taken place. It is palpably silly to try to kill discrimination by government fiat. There must be a more practical approach."

Let us look at the activities of the new committee relating to the utility field and determine, if possible, to what extent the FEPC may carry out reform measures among railroads, transit, telephone, electric power, and communications companies.

PRESENT indications are that the utilities are going to get more attention, if possible, under the new setup than under the old, although the difficulties of one or two utilities may be settled without much further trouble for more or less obvious reasons. One of these cases is that of the Capital Transit Company in Washington, D. C., which for months has been plagued with recurring demands by Washington's colored population that it employ Negro drivers.

Under the old FEPC, the company was ordered to do certain things. It attempted to comply, but its white employees complicated the situation. Public hearings were ordered but were never held. The new committee thus

far has refused to call public hearings and, as of today, says that neither it nor the company will make any comments, but that the company has been ordered to do other things which, thus far, the company appears to be doing satisfactorily.

Close observers of the case see several reasons for putting the quietus on the Capital Transit Company Case at this time. One of these reasons could have been the Detroit riot, which could have proved to political leaders what has been pointed out by cautious men—that it is unwise to advance with reforms faster than the group mores permit. Wild rumors spread through Washington following the Detroit riots and talk to the effect that "it could happen here" was heard in more than one group, both white and colored.

Obviously a full-fledged race riot in the capital of the United Nations would be one of the most embarrassing things that could happen to the present administration, as well as one of the most vicious things that could happen to the war efforts here and abroad. It may be certain practical men in Washington successfully urged the powers-that-be not to aggravate the local situation by goading the colored populace into believing that it could expect heaven on earth by July 4th.



Q"ALTHOUGH Congress has fought hard to regain some of its powers, and although the people generally have shown some mass recognition of the perils of bureaucracy, many observers point out that the army of office holders still controls the present home front situation, by dint of the very confusion that has been generated. In short, with some 2,250 different government agencies with which to work, the men who are running the show in Washington have a pretty broad field for . . . progress along the lines they desire."

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Some observers, seeing that the Capital Transit Company Case left the prints quickly, interpreted it as being a concession on the part of the administration to the southern prejudice that still hangs over the town and to the conservative southern Democrats who have been veering further and further from the administration fold in recent months. However, this may be a case of imputing political motives where none exists.

There are two side lights to be noted in passing from the Capital Transit Company Case. When the War Labor Board, on August 9, 1943, announced a 5-cent-an-hour increase to certain employees of the company, agreed upon in advance by the company and union, a 4-man minority of the WLB said it disapproved the wage adjustments "not because the proposal lacks intrinsic merit, but because we believe that action by the board on the entire matter should have been deferred as requested by the Fair Employment Practices Committee, pending a determination of the relation between the proposed adjustment and the charge that the Capital Transit Company is practicing race discrimination in employment."

EVIDENCE of Communistic inspiration for much of the agitation for more Negro employment in Washington utilities was seen during June in the resignation of Doxey A. Wilkerson, former Howard University professor, who resigned from a good job in OPA to become a permanent employee of the Communist party's educational program. Presumably, Wilkerson had been affiliated with Communist activities for some time. He

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had been one of the three persons who applied for permission to hold a demonstration in Washington on May 7th protesting against the failure of the Capital Transit Company to hire Negro bus and streetcar operators and he was one of a small delegation which called on the WMC director for the District of Columbia demanding immediate action in the employment of Negroes by the company.

Monsignor Haas immediately saw that it was the technique rather than the objective which was making the Capital Transit Case very explosive material. As long as open hearings were available to Communists and others, more anxious to stir up agitation than pacify it, the Capital Transit Case could be made the sounding board for some very ugly developments indeed. The same thing held true with respect to cases involving telephone companies and other utilities in half a score of border-line cities along the Mason-Dixon line. He adopted a system of round-table conferences in an effort to get parties to come to terms by negotiation. He did not surrender the open hearing weapon but he kept it handy as a threat. As a result, the Capital Transit Case, at this writing, appears likely to be solved peacefully.

ANOTHER good deed which must be accredited to Monsignor Haas was his recognition that former FEPC practice discriminated in favor of the Federal government. In other words, the open hearing technique was used only for complaints against private industrial employers. Whenever a complaint was made against a government bureau involving racial or other discrimination, it called for privately con-



Effects of Race Riots

“OBVIOUSLY a full-fledged race riot in the capital of the United Nations would be one of the most embarrassing things that could happen to the present administration, as well as one of the most vicious things that could happen to the war efforts here and abroad. It may be certain practical men in Washington successfully urged the powers-that-be not to aggravate the local situation by goading the colored populace into believing that it could expect heaven on earth by July 4th.”

ducted procedure. Monsignor Haas said he did not know why this distinction had been made; but it was generally understood that original instructions had come from the White House. In any event, having admitted the unfairness of the setup, he indicated that he would take steps to eliminate it. This is now up to his successor.

However, those persons who look upon the FEPC's relation with the Capital Transit Company as a gauge to its activities in the utilities field should not jump to hasty conclusions. The FEPC has gone in for bigger game. After it held hearings on railroad employment practices, however, the FEPC activity was complicated by a ruling of Comptroller General Warren that President Roosevelt's Executive Order 9346 was not an order but a directive and, therefore, that compliance with it is voluntary.

The old committee chairman, Mr. Cramer, had mentioned vicious union practices on several southeastern railroads that prevented Negroes, he declared, from gaining increases in prestige and salary, but he never took action against the big operating unions and the huge railroad industry. With many more employees and, presumably, much more money and a freer hand, the FEPC has lately chosen to tackle the “big boys.”

Hired to represent the FEPC for the hearings were Bartley C. Crum, prominent attorney of San Francisco, who will be chief counsel, and Charles A. Houston, of Washington, and Harold Stevens, of New York city, both of whom will be associate counsel. Such a campaign as the committee will wage against the railroads will serve many useful purposes, some

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of which could be termed political by carping critics of social reform.

The campaign, for one thing, will unite old "liberal" friends who have been falling out with one another regularly of late. Because the campaign is against railroads, it can be expected to obtain the support of folks such as Senator Wheeler, that confirmed critic of private railroad management. The hearings could give the committee, hence the administration, publicity throughout the nation, calling back to the fold many disgruntled liberals who might have thought the administration was going reactionary after retreating from its OPA subsidy plans. And, because no action will likely be forthcoming for many months, the hearings will not alienate those realists who do not mind liberals until a "liberal" actually socks them personally.

If there are those who think Chairman Ross will be less alert to discrimination in war industries because he will follow his predecessor's lead regarding discrimination in government, they must be thinking wishfully. He will undoubtedly be fair in all his activities, but have not all government administrators been fair in their dealings with industry?

MONSIGNOR Haas did have long experience in government and is noted as one of the most liberal thinkers of the nation. He has been, among other things, impartial chairman of the Milwaukee Newspaper Industry, general secretary of the Milwaukee County Association for Promotion of Old Age Pension, member of the National Labor Board, member of the Labor Policies Board of the Works Progress Administration, member of the Commit-

tee to Report on Changes in Labor and Business Standards, NRA, special commissioner of conciliation, U. S. Department of Labor, member of the Committee on Long Range Work Relief Policies of the National Resources Planning Board, and the author of a number of books on industrial and sociological subjects, as well as prolific contributor to economic and sociological journals.

When he was appointed to head the FEPC he was dean of the Catholic University of America in Washington, and showed immediately that he knew his way about in government. Instead of letting his agency remain under WMC, or get shunted about from one agency to another, he insisted that it be made a separate agency on par with the other war agencies. Then, to prevent misunderstandings and clashes of wills and jurisdictional fights, he asked for and received an agreement with Paul V. McNutt, chairman of the WMC, relating to the spheres of influence of the two agencies. This agreement defined the responsibility of the WMC and the FEPC in the enforcement of nondiscrimination policies. As the administrative machinery of WMC embraces the fields of training, placement, and utilization of man-power, the agreement states that "it shall be the duty of WMC personnel at all operating levels to cooperate fully with the personnel of FEPC in the enforcement of the nondiscrimination order."

EACH WMC regional office will designate a representative to cooperate with the related regional office of the FEPC to avoid duplication and overlapping. If any interagency difference arises that cannot be settled by Mr.

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McNutt and Chairman Ross, the President will be the final impartial chairman. His decisions will be final.

Briefly, according to representatives of FEPC, the utilization bureau of WMC will have a chance to get at instances of discrimination first. The WMC must report all instances of discrimination to FEPC, but actually FEPC will not go into action until WMC has had a chance to remedy the situation. If the situation is a "bad" one, then FEPC has authority to step in at the very first.

Monsignor Haas, who blamed the Detroit riot principally on "inadequate housing, recreation, and public transportation difficulties," declared that FEPC has no jurisdiction over bad feeling between Negroes and whites and is authorized only to prevent discrimination in employment because of race, creed, color, or national origin. As a result, Ross will stick to business—and his business will usually run right into businessmen, in the opinion of many observers.

THE new committee is composed, besides Chairman Ross, of John Brophy, national director of the Industrial Union Councils of the Congress of Industrial Organizations; Boris Shishkin, economist for the American Federation of Labor, and Milton P. Webster, international vice president

of the Brotherhood of Sleeping Car Porters, AFL, all representing labor; Miss Sara Southall, supervisor of employment and service, International Harvester Company, Chicago, Ill.; P. B. Young, Sr., publisher, *Norfolk Journal and Guide*, Norfolk, Va.; and Samuel Zemurray, president, United Fruit Company, Audubon place, New Orleans, Louisiana, who represent industry.

The three Labor members served on the old FEPC, but the three management members are brand-new to non-discrimination work. Mr. Young, it might be noted, who owns a newspaper, might find himself operating a quasi public utility almost any day, if the government's suit against the Associated Press is won. Many persons say that if the government's case holds up through the courts, the AP and other news-gathering agencies will become *de facto* public utilities.

A survey of the new employees put on by the FEPC in its expanding field offices shows that they are generally liberal in outlook and that many of them have been urging race reforms for years. This fact bears out the contention of the reactionaries who seem to feel that the new FEPC will work harder than ever to open up a new salient for social reform before the war is over and Johnny comes marching home.

"THE man elected president in 1944 is going to have such heavy duties that he should be content with four years. And he will be so busy that there will be little time for politics. There will be no sectional problems such as Hayes had, but there will be other divisions in the country that will need attention. And he will have to find the way to demobilize the biggest and possibly the most incompetent bureaucracy that any war ever produced."

—RAYMOND MOLEY,
Writing in The Wall Street Journal.



Wire and Wireless Communication

ON November 3rd hearings were scheduled to get under way before the Senate Interstate Commerce Committee on the Wheeler-White bill to reorganize the Federal Communications Commission and spell out the jurisdictional authority of the commission under the Communications Act. It is possible that such hearings may be worked in in some way with progress on the Wheeler-White-McFarland resolution calling for an investigation of international communications by wire and wireless. This resolution, approved by the Interstate Commerce Committee under the chairmanship of Senator Wheeler, was also approved by the Senate.

The Wheeler-White-McFarland inquiry would examine ownership, control, and services rendered as well as rates. It would particularly look into the extent and nature of control and influence of foreign governments over communications which extend into this country.

The resolution is an outgrowth of congressional demands that groundwork be laid by Congress for the establishment of an American policy on international communications. Senator Wheeler stated that he had come to the conclusion that there must be some form of government control over foreign communications touching in this country for the protection of our own Army and Navy as well as domestic commercial interests.

Creation of one or more big American combines to handle this country's inter-

national communications — cable, radio, and telephone—is under active consideration by government agencies. Such "monopolistic" companies would be privately owned and operated but would be backed by the full weight of government prestige and authority in much the same manner as Great Britain supports its international communications monopoly, Cables & Wireless, Ltd.

ALL government agencies interested in international affairs have been represented in the preliminary discussions now under way. The State Department and the Federal Communications Commission, however, are taking the lead. The nine important American companies now operating in the international communications field have not yet been called into formal consultation. However, it is understood that executives of several of these corporations favor the general idea and hope a plan for foreign operations can be worked out to establish a strong company or companies, with a position comparable with that which the American Telephone and Telegraph Company holds in domestic telephone communications and Western Union has just gained in the telegraph field.

Government officials currently are discussing two alternatives to formation of a single giant monopoly. One group advocates creation of two combines, one embracing telephone communications between the United States and foreign countries, and another handling tele-

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graph, whether by radio or cable. A second group believes that three combines should be formed—one of telephone, a second of cable-telegraph, a third, radio-telegraph.

Any of these schemes would reverse a long-standing governmental policy of fostering strong competition among American companies operating in the foreign field. The purpose, officials say, is to make possible an extension of American influence and operate "on more even terms" with the British monopoly.

ON the House of Representatives side of the Capitol, Chairman Lea of the special committee investigating the FCC announced that certain rules of procedure had been adopted to avoid criticism of the committee's further investigation of the Federal board on grounds of unfairness.

The revised procedure as agreed on follows:

All hearings of the committee shall be presided over by one of its members instead of by a member of the staff.

All hearings shall be open to the public unless, because of military secrets or other public interest, the committee shall determine to meet in executive session with a quorum present.

The FCC shall be notified in advance of all hearings.

Oaths shall be administered to witnesses by the presiding chairman of the committee at any hearing.

All witnesses shall testify under oath.

It is the purpose of the committee to allow the commission full opportunity to present, in due time, any facts relevant to the subject matter of the hearing.

Lea said that the committee had now agreed that under the resolution which created it, "hearings can be conducted only by a member of the committee and the presence of such member during the whole of such hearing must be regarded as within the intention of the resolution."

An immediate result of the committee's action was to bar from the record temporarily the testimony of two officials of a New York radio research firm until they could be heard in an open session with a committee member present. Lea said that the statements of the two of four officials of Short Wave Research, Inc., were taken "without the presence of any member of the committee at any time, and that in the case of one of the other witnesses a committee member was in attendance only a part of the time."

* * * *

REPRESENTATIVE Mundt, Republican of South Dakota, declared recently that government operation of radio broadcasting is possible unless private owners ban what he described as bias and personal opinion from their programs.

"It is our hope," he told the House, "that the radio industry will take steps to eradicate its own evils, but if the government must act it is felt that Congress can prescribe regulations which will make freedom of speech on the air an equally true privilege of all and not merely an opportunity for propagandizing to the privileged few."

While expressing favor of private operations, Mundt declared that although a "few wealthy radio tycoons" might not take the warning seriously, "private ownership and operation of radio in this country is not a guaranteed certainty for even the next four years—to say nothing of the permanent future." He said:

Let these big men of radio scoff if they want to. I happen to know that the danger that privately operated radio in this country may have a short life is not something to be blithely overlooked.

Stockholders and officials of large radio corporations might well remember that indifference to danger signs along the way was precisely the attitude which trapped the great industrialists of Germany into becoming the servants of the Nazi political state.

Indifference to public opinion and to public trends in this country may well do the same for our radio industry.

Those who are in authority for the moment in private radio have a responsibility to themselves, to their stockholders, to the cause of private radio, and to America it-

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self, to discontinue flaunting bad practices in the face of public opinion and to take steps to eliminate them before they give cause to support existing plans to make radio a public instead of a private monopoly.

* * * *

TELEVISION interest in the East still is high in spite of the war, S. S. Fox, president and general manager of the Intermountain Broadcasting Corporation, said recently following his return to Salt Lake City from New York city.

Accompanied by John Baldin, chief engineer of the Intermountain Broadcasting Corporation, he attended a meeting of the NBC advisory board, and made a special study of television developments. Some developments which will improve postwar television lie in the realm of military secrets, Mr. Fox said. These are along the line of higher efficiency, better antennas, and improved tubes. There have been no developments which will change the fundamental principle of television transmission and reception, Mr. Fox said.

Factories are preparing plans for television transmitters and taking orders for postwar delivery, Mr. Fox said. He added another optimistic note by stating that new tubes, which will simplify the internal circuits in home receivers, will bring down the price. It appears that the unit cost of home television receivers of good quality will be about \$250, with smaller sets proportionately cheaper. The trend is toward receivers for home use which will give pictures 14 by 20 inches, he said.

* * * *

THE contract between the Porto Rico Telephone Company, a subsidiary of International Telephone & Telegraph Corporation, and the government of Puerto Rico expires this year, and the insular government has given notice that it intends to purchase the property. Under the terms of the contract, the government is given the right to acquire within a year, if it gives notice of intent before the expiration of the contract.

It is understood the government has already employed a Chicago engineering

firm, J. G. Wray & Company, to conduct a survey of the equipment and property of Porto Rico Telephone. Benjamin Ortiz, president of the public service commission of Puerto Rico, recently stated that in a visit to the United States he had arranged for a \$5,000,000 loan in the form of a bond issue with which the communications authority planned to purchase the telephone equipment and property involved. The appraised value of IT&T's interest (approximately 97 per cent) in the Porto Rico Company is in the neighborhood of \$5,000,000.

* * * *

To implement the purposes of the merger of Western Union Telegraph Company and Postal Telegraph, Inc., approved by the FCC September 27th, the commission announced on October 19th it had authorized Western Union to eliminate about 1,800 duplicate telegraph offices now serving substantially the same areas. The orderly elimination of these offices will enable Western Union to provide for a more efficient use in the merged carrier of the facilities and personnel of both Western Union and the former Postal company.

The need for this authorization arose immediately following announcement of the merger, when telegraph traffic became heavily concentrated in Western Union offices, overtaking its facilities and personnel, while former Postal offices were relatively idle. (See also page 653.)

The "protection of the interests of the public" requires, however, that this authorization be subject to certain conditions and exceptions, the commission noted. The FCC order forbade Western Union to dismantle any trunk pole lines, wires, conduits, or cables; to close any functional office or to close or cut hours of service of any office in a community where the nearest available telegraph office is located more than one-quarter of a mile away; or to close, cut hours of service, or otherwise impair the operating efficiency of any office which is the only office in a community. Finally, where a duplicate telegraph office is eliminated, Western Union may not reduce the

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maximum combined hours of service now given that community.

Commissioners Paul A. Walker and Clifford J. Durr dissented.

* * * *

THE Federal Communications Commission announced its Proposed Report (P-28), on rehearing, denying relief sought by the Oklahoma-Arkansas Telephone Company for a physical telephone connection at Ft. Smith, Arkansas, between the facilities of that company and the Southwestern Bell Telephone Company (respondent), and the establishment of a through route and charges between Poteau, Oklahoma, and Ft. Smith, Arkansas (Docket No. 3796).

The commission concluded that the proceeding should be dismissed, Commissioner Walker dissenting.

The request had originally been denied by the commission in its report and order dated February 6, 1939, Commissioner Walker dissenting. On December 16, 1941, the commission, on its own motion, reopened the proceedings to determine whether, because of the national war emergency, it might then be in the public interest to establish the physical connection and through route.

The commission gave consideration to the quality of service which the Oklahoma-Arkansas Telephone Company would offer, the critical materials and labor which the petitioner would require to rehabilitate its lines, and the availability of additional circuits of the Southwestern Bell Telephone Company, before concluding in its proposed report that "it is not necessary or desirable in the public interest to order a physical connection at Ft. Smith, Arkansas, between the facilities of the parties herein, or to establish through routes and charges between Poteau, Oklahoma, and Ft. Smith, Arkansas."

In his dissenting opinion Commissioner Walker stated:

Respondent, by severing physical connection . . . at or near Ft. Smith, Arkansas, has deprived petitioner of the use of its toll line and the right to route any of its long-

distance business over that line. The facts and circumstances connected therewith constitute, in my opinion, an unwarranted . . . taking . . . of complainant's property. . . . In determining whether the relief sought will be in the public interest, consideration may not be restricted to quantity and quality of service. . . . Public interest also includes the right of the people to use specific public utility facilities which they have heretofore enjoyed, and would yet enjoy but for the arbitrary action of the respondent, and the preservation of due competition in the telephone utility field and the protection of smaller independent enterprises from unwarranted destruction by the more powerful and ever-growing monopolies. . . . The wrongs committed by the respondent herein will, unless corrected, remain forever a reminder to the public of the arbitrary and hurtful actions which can be perpetrated by a powerful monopoly.

The ultimate effect of such actions will be to destroy . . . public trust and confidence in utility management.

* * * *

THE Washington Supreme Court has handed down an important decision variously upholding contentions of both the Pacific Telephone & Telegraph Company and the Washington Department of Public Service in a telephone rate case started in 1940. On the question of fair rate of return the high court reversed a lower court ruling that "not less than 6 per cent" was required as against 5 per cent ordered by the board.

Other features of the decision were as follows: That the state commission should allow some portion of the company's gross income to be paid to its parent, American Telephone & Telegraph Company, for research; that the company's employee pension system should stand and be chargeable as operating expense; that the company is entitled to earn a return on property held "for future use"; that the commission may permit the company to charge as expenses, excise taxes levied by local communities; that the commission rightly denied the company's petition to install "metered service" in Seattle; that the trial court erred in holding that a determination of fair value of the company's property must include consideration of the cost of reproduction.



Financial News and Comment

By OWEN ELY

A Valuable Statistical Summary On Utility Bonds and Preferred Stocks

THE First Boston Corporation recently issued its 1943 edition of "Public Utility Bonds and Preferred Stocks—Statistical Data." The booklet has appeared for about ten years, with the current addition of the preferred stock data, and now includes the following number of selected issues (Moody ratings):

<i>Electric & Gas Bonds</i>	
Aaa	24
Aa	49
A	44
Baa	29
Ba	1
<i>Telephone Bonds</i>	
Aaa	6
Aa	6
<i>Electric & Gas Pfd. Stocks</i>	180

One of the pages giving data on six Aaa bond issues is here reproduced.

As a leading underwriting house (see FORTNIGHTLY October 14th, page 498) First Boston has tabulated selected items and ratios in very much the form in which they and other investment bankers prepare "comparison tables" on issues for which they are bidding. These large tables usually compare the pending bond issue with selected issues of similar quality, size, business, etc., to aid the firm and other members of the group in preparing their bid as realistically as possible.

Thus, the bidding for high-grade utility refunding bond issues is becoming somewhat of an "exact science." Since many of these issues are currently quoted almost in competition with Federal bonds of similar maturities, it

is obviously necessary to subject them to the most rigid statistical scrutiny. There is always the danger that, if an underwriting house is somewhat overeager to obtain an issue, it will submit a bid slightly above the market for similar issues (after allowance for their "seasoned" market position). When this occurs institutional buyers are apt to shy away from the offering, and it may become "slow" or "sour." Fortunately there have not been many of these issues, but the present régime of competitive bidding, forced by SEC Rule U-50, probably makes the danger somewhat greater than under the old system of negotiated bidding, where competitive pressure was less operative.

It will be noted that the ratio "times present interest requirements earned" is presented in six different ways, depending on whether depreciation or Federal income taxes have been deducted, and whether junior bond interest is included in charges. In some underwriting analyses three additional figures may be presented, including in fixed charges not only the aggregate interest payments but also various amortization and miscellaneous items.

In this connection, the interesting question arises whether amortization of plant acquisition adjustments should correctly be classed as an expense, a deduction prior to fixed charges, a fixed charge, or a profit and loss item. Obviously to include the amount in fixed charges may sharply reduce the "times earnings" ratios. Actually the item is similar to depreciation and does not involve any cash expenditure. Hence it would seem proper to consider it as an expense item, at least

FINANCIAL NEWS AND COMMENT

	(See continued)	Boston Electric 2-1970	Consolidated Gas of Baltimore 2-1978	Philadelphia Electric 2-1971	Cleveland Electric Illum. 2-1970	Consolidated Gas of Baltimore 2-1969	Public Service Electric & Gas 2-1972
Date Offered		Dec. 4, '40	Jan. 14, '41	Nov. 26, '41	July 17, '40	June 7, '39	June 2, '42
Original Offering Price		105	105 1/4	104.176	105 1/4	106	104 1/4
Rating—Moody's; Standard & Poor's		Aaa; A1+	Aaa; A1+	Aaa; A1+	Aaa; A1+	Aaa; A1+	Aaa; A1+
Present Call Price		108.4	108	107	107 1/4	107	107.2
Date of Next Change		Dec. 2, '43	Jan. 2, '46	Dec. 1, '43	July 1, '44	June 2, '44	May 1, '44
Next Call Price		108.1	107	106.7	107 1/4	106	107
Legal Investment In	CMDFP	CMDFP	2NF	CMDFP	CMDFP	2NF	CMDFP
Sources of Revenues—Electric Gas		96% —	76% 22	90% 9	96% —	76% 22	74% 26
Period of Earnings (12 mos. ended)		March 31, '43	Dec. 31, '42	Dec. 31, '42	March 31, '43	Dec. 31, '42	Dec. 31, '42
Operating Revenues		\$40,811	\$47,359	\$53,786(a)	\$37,585	\$47,359	\$124,300
Maint. & Depr. % Oper. Revs.		19.1%	13.8%	14.7%	17.0%	13.8%	13.7%
Provision for Fed. Inc. & Ext. Prof. Taxes		\$ 4,992	\$ 5,747	\$12,202	\$ 5,712	\$ 5,747	\$10,479
Provision for Depreciation		4,916	4,313	7,275	4,465	4,313	9,809
Gross Income after Depreciation & Taxes		6,888	6,621	19,708	7,459	6,621	26,614
Interest Requirements—Mortgage Debt		\$ 1,458	\$ 2,416	\$ 5,100	\$ 1,800	\$ 2,416	\$ 7,373
Interest Requirements—Total Funded Debt		1,458	2,416	5,168	1,500	2,416	7,373
Times Present Interest Req. Earned:							
Before Federal Income Taxes:							
Mtgs. Req. before Depreciation		11.50	7.75	7.68	11.78	7.75	7.81
Mtgs. Req. after Depreciation		8.15	5.95	6.25	8.80	5.95	6.53
Total F.D. Req. after Depreciation		8.15	5.95	6.17	8.80	5.95	6.53
After Federal Income Taxes:							
Mtgs. Req. before Depreciation		8.09	5.36	5.29	7.97	5.36	5.17
Mtgs. Req. after Depreciation		4.71	3.57	3.85	4.99	3.57	3.88
Total F.D. Req. after Depreciation		4.71	3.57	3.81	4.99	3.57	3.88
Gross Income % Mortgage Debt		22.4%	19.3%	21.3%	26.4%	19.3%	25.4%
Gross Income % Total Funded Debt		22.4	19.3	20.6	26.4	19.3	25.4
Bal. after Mtgs. Req. % Oper. Revs.		25.3%	25.2%	32.0%	30.5%	25.2%	32.7%
Bal. after Total F.D. Req. % Oper. Revs.		25.3	25.2	31.9	30.8	25.2	32.7
Capitalization:							
Funded Debt—Prior Liens	\$ —	\$ 6,100	\$ —	\$ —	\$ 6,100	\$ 58,002	
This Issue	53,000	12,000	20,000	50,000	7,000	15,000	
Same Lien	—	50,284	130,000	—	61,284	116,300	
Junior Funded Debt	—	13	4,500	—	13	—	
Total Funded Debt	\$ 53,000	\$ 74,387(b)	\$154,500	\$ 50,000	\$ 74,387(b)	\$189,302	
Preferred Stock	—	29,185	27,472	25,499	29,185	50,220	
Common Stock & Surplus	109,373	61,508	149,899	56,995	51,508	211,087	
Total Capitalization	\$162,373	\$155,000	\$331,871	\$132,494	\$155,090	\$450,615	
Mortgage Debt % Total Capitalization	32.6%	48.0%	45.1%	37.8%	48.0%	42.0%	
Total Funded Debt % Total Capitalization	32.6	48.0	45.5	37.8	48.0	42.0	
Mortgage Debt per \$ of Oper. Revs.	\$1.30	\$1.53	\$1.79	\$1.32	\$1.53	\$1.53	
Total Funded Debt per \$ of Oper. Revs.	1.30	1.53	1.84	1.32	1.53	1.53	
Property Account ¹ as of:							
Dec. 31, '42	Dec. 31, '42	Dec. 31, '42	Dec. 31, '42	Dec. 31, '42	Dec. 31, '42	Dec. 31, '42	
Utility Plant	\$ —	\$162,680*	\$344,389*	\$ —	\$162,680*	\$438,294*	
Intangibles	—	16,380	1,143	—	16,380	85,033	
Plant Acquisition Adjustments	—	—	5,204	—	—	—	
Gross Plant	\$180,047	\$169,069	\$351,838	\$165,343	\$169,069	\$523,197	
Depreciation Reserve	29,401	25,678	48,170	40,627	25,678	89,567	
Net Plant	\$150,646	\$143,391	\$303,668	\$124,716	\$143,391	\$434,630	
Depr. Reserve as % of Gross Plant	16.8%	15.2%	13.7%	24.6%	15.2%	17.1%	
Provision for Depr. as % of Gross Plant	2.6	2.6	2.1	2.7	2.6	1.8	
Gross Plant per \$ Operating Revenues	\$4.56	\$3.57	\$4.20	\$4.35	\$3.57	\$4.22	
Mortgage Debt as % of Gross Plant	28.5%	44.0%	42.6%	30.3%	44.0%	36.1%	
Mortgage Debt as % of Net Plant	33.8	61.8	49.4	40.1	61.8	43.4	
Total Debt as % of Net Plant	33.8	61.8	60.8	40.1	61.8	43.4	
Domestic Electric Rates & Usage ² (1942)							
Average Revenue per KWH	4.96 ⁴	3.20 ⁴	5.38 ⁴	3.16 ⁴	3.80 ⁴	4.24 ⁴	
Average Annual Usage (KWH)	794	911	1069	1101	911	795	
Chief Source of Power ³	S	S-P	S-P	S	S-P	S	
Cost Purch. Power & Gas % Op. Rev. (1942)	4.5%	11.4%(c)	8.5%(f)	—	11.4%(c)	2.9%	
% Mtgs. Debt to be Retired by Sunk Fund ⁵	24%(a)	(d)	None	None	(e)	None	
Maint. & Renewal or Improvement Fund	No	No	Yes	Yes	No	Yes	

Collected legal investment for Savings Banks and Trust
Banks in: (1) Conn., (2) N. J., (3) Mass., (4) N. Y.,
(5) Pa. and Trust Funds only in (6) N. J.
(7) The amount is made for cost of purchased power or gas.
(8) After depreciation but before Federal Income Taxes.
(9) The amount at which the property account is stated does
not purport to represent present day replacement or
retainable value.
(10) Annual Average (1942): Rate per KWH: 3.47; Annual
Usage: 1023 KWH.
(11) S—Steam; P—Purchase.
(12) To be retired before current mortgage bond maturity,
subject to minimum cash sinking fund requirements.

* Segregation based on Company's original cost studies;
"Utility Plant" excludes intangibles and adjust-
ment items.
(a) Sinking fund begins 1948.
(b) Company also unconditionally guarantees Safe Harbor
Water Power Corp. bonds.
(c) Cost of electricity only; cost of gas not available.
(d) 1% annually of largest amount outstanding during the year.
(e) All amounts and ratios based on company only figure.
(f) Cost of electricity for 1941; cost of gas not available.
(g) Includes Company's investment in Montauk Electric
Company at cost, \$4,000,000. Accounts classified as pre-

scribed by Massachusetts Department of Public Utilities
and original cost studies reviewed by F.P.C.
(b) Original cost studies approved by F.P.C.
(c) Give effect to tax savings of \$201,931 resulting from
accelerated amortization of facilities certified as necessary
in the interest of national defense. Reported figures
adjusted to reflect estimated increased taxes which will
result from interest saving on retirement of debentures.
(d) After Nov. 1, 1960. For sinking fund at 100 beginning
May 1, 1964.
(e) Substantially at original cost (including
approved by F.P.C. and Public Utility
Commission subject to later final check.

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PUBLIC UTILITIES FORTNIGHTLY

for the purpose of analyzing earnings coverage for bond charges.

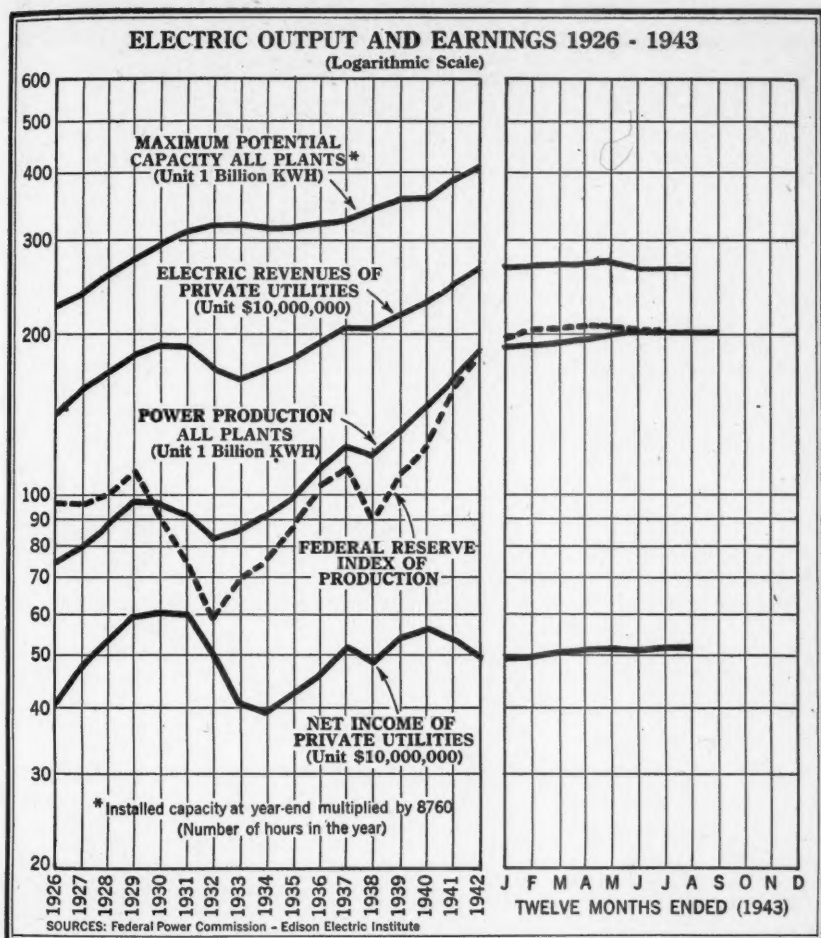
This statistical problem will doubtless gain increasing attention because of the current write-off program instituted by the FPC. In every case where a refunding operation or sale of a common stock by a holding company is involved, the tendency of the regulatory commissions as well as the bankers is to take a conservative attitude and to write down the property so far as possible to original cost. But it seems unfair to charge off part of the write-off to reserve and/or surplus and to throw the remaining burden (through amortization over a period of years) on the fixed charges. Thorough consideration of this problem requires more space than is here available, but the subject is one to which utility executives should give careful consideration before precedents are thoroughly established and imbedded in the accounting regulations. In two recent security offerings the problem came up. In the sale of Idaho Power stock there was some question as to whether common share earnings should be stated before or after a newly initiated plant amortization item. The same problem is arising in connection with the current Delaware Power & Light refunding bond issue.

In this connection a similar problem may be mentioned. Where new financing occurs a considerable saving is frequently effected through the charging off against income of premiums on retired securities. This means so big a saving in Federal taxes for the current year as to throw net earnings out of line. Accordingly, it is becoming customary to insert in the fixed charges for that period, an item, "charge in lieu of Federal tax savings." However, instead of placing this item among the operating revenue deductions next to Federal taxes, where it properly belongs, it seems to be the fashion to place it in fixed charges. Some of the financial services then automatically include it in the total of such charges, showing a smaller number of times earned. Correct location of this book-keeping item would avoid this mechanical error.

It will be noted that First Boston Corporation in tabulating the property account provides separate items for intangibles and plant acquisition adjustments. It would be more exact if these items could be designated as "Account 100.5" and "Account 107." In many cases, the studies prepared by the companies (in conformity with regulations imposed by the FPC or the legal state commissions) have not progressed far enough to make these figures obtainable. However, it is increasingly the custom to indicate the progress made in setting up these charges, in the form of balance sheet footnotes in the annual reports, or (in more detail) in the prospectus issued in connection with a public security offering. The situation is still somewhat "foggy" even for the utility analyst, and there is considerable difficulty in obtaining accurately comparable figures for "aboriginal cost," as it is sometimes termed.

To illustrate the difficulties of interpreting these figures, the question was raised by a potential buyer for a recent new bond issue, as to whether the bonds were definitely legal for purchase by savings banks in the state of New Jersey. That state specifies that the outstanding mortgage bonds must not exceed two-thirds of the net book value of plant.

The question was raised as to whether the plant acquisition account adjustment, amounting to several million dollars and to be amortized over a 15-year period, should not be deducted from plant account as an "intangible," in which case the ratio would exceed 67 per cent and the bonds would not be legal. A legal opinion was obtained to the effect that such deduction was unnecessary, but it is obvious that a great deal of confusion may arise over the present methods of handling these so-called write-offs or amounts in excess of "aboriginal cost." The use of voluminous footnote explanations appears the only solution, during the present transition stage, but it would be helpful if accounts 100.5 and 107 could be actually shown in the balance



sheet itself, together with an indication of their intended treatment (by amortization or otherwise).

Sometime ago a set of standard statistical "ratios" was set up for the guidance of institutional buyers of utility securities. It seems obvious that new problems are arising and new ratios are in process of formation. Cooperation between all interested parties will be necessary to effect a scientific solution of the new problems which have arisen. In this connection it may be remarked that the

present trend is toward the use of the "over-all coverage" test for high-grade preferred stocks—the number of times the composite figure of fixed charges and preferred dividend requirements is earned.

This figure is considered to give a much better indication of relative safety than the more old-fashioned "number of times dividend earned" or the share earnings figure.

Other preferred stock ratios presented by First Boston are funded debt and

PUBLIC UTILITIES FORTNIGHTLY

preferred stock per dollar of operating revenues, and the balance after preferred dividends as a percentage of operating revenues. A recent innovation is the "tax cushion" ratio, which is computed as follows: First, there is computed the minimum income which will enable any given company to just cover fixed charges, income taxes, and preferred dividends. This is the amount below which earnings must not fall if preferred dividends are fully earned. The ratio of present gross income (before charges and before income taxes) to this minimum income is the "tax cushion ratio." "Minimum income" for most public utility operating companies is computed by adding fixed charges to 140 per cent of preferred dividends.

New Financing

DUE to inevitable delays in preparation of new issues, as well as the desire not to compete with the government bond campaign during September, the volume of autumn security offerings has proved somewhat smaller than anticipated. As indicated in the accompanying chart, September volume was fairly good considering the fact that most of it was accomplished early in the month. September offerings and the firms heading the syndicates were as follows:

\$1,500,000	Arkansas Louisiana Gas 1st 3½s due 1948-53 at par (sold privately to institutions)
\$17,000,000	Iowa Power & Light Co. 1st 3½s due 1973 at 108½ (Kidder, Peabody)
\$4,000,000	Pennsylvania Electric 1st 3½s due 1973 at 106½ (Salomon Bros. & Hutzler)
\$3,500,000	Pennsylvania Electric 4.40% preferred stock at 105½ (Smith, Barney)
\$18,000,000	West Texas Utilities 1st 3½s due 1973 at 102.46 (First Boston Corp.)

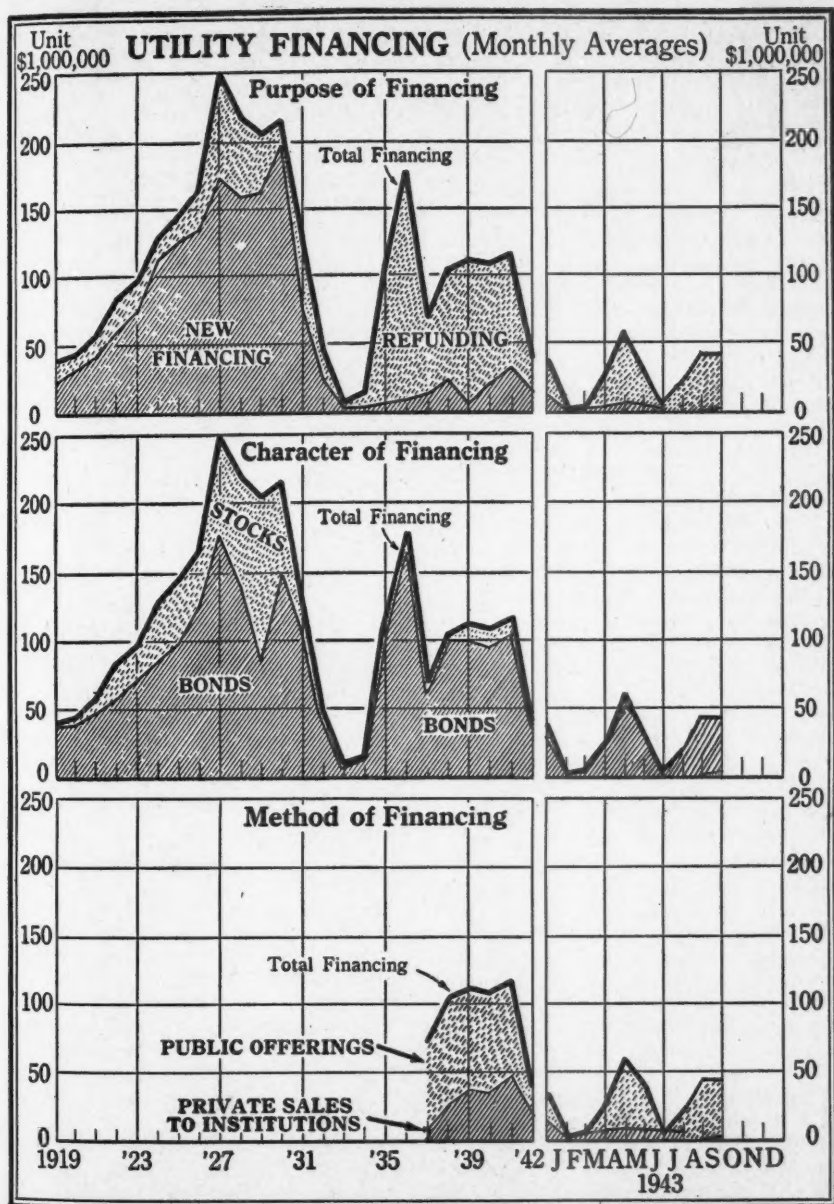
During October (to date) offerings have been as follows: A group headed by Shields & Co. offered \$7,500,000 Atlanta Gas Light first 3s due 1963 at 101.45 (to yield 2.90 per cent) and 20,000 shares of 4½ per cent preferred at

102.25 (to yield 4.40 per cent). A syndicate headed by First Boston Corporation has been awarded the \$15,000,000 Delaware Power & Light first and collateral trust 3s due 1973, and 40,000 shares of 4 per cent preferred stock; the new bonds are expected to be retailed on a 2.70 per cent basis and the preferred to yield about 3.78 per cent. A Dillon, Read syndicate offered \$16,000,000 California Electric Power first 3½s due 1968 at 103½ and at the same time a group headed by Stone & Webster and Blodgett and Bosworth, Chanute, Loughridge & Co. offered 40,000 shares of the company's 5½ per cent convertible prior preferred stock at 102½. The California Electric financing was noncompetitive.

Regarding pending financing, the largest issue is the \$65,000,000 Illinois Iowa Power first mortgage and collateral trust bonds due 1973, registered with the SEC October 23rd, which will be supplemented by a bank loan of \$4-5,000,000.

Cities Service Power & Light has proposed to recapitalize the common stock of its subsidiary, Public Service of Colorado, and to make a noncompetitive sale of the resulting 875,000 shares of \$20 par value. Following the precedent established in the Idaho Power Case several months ago, the commission will, it is assumed, grant the request for a negotiated deal (obtained through arm's-length negotiation). The company contended that, by reason of the magnitude of the sale, the fact that none of the stock was publicly held, the lack of listing of the publicly held senior securities on any national exchange, as well as the proposed changes in the balance sheet and capitalization of Colorado, the company could obtain a price more nearly approaching the intrinsic value by negotiation rather than by competitive bidding. The company has also proposed sale of a much smaller subsidiary, Durham Public Service, to Duke Power Company. Cities Service expects to use proceeds of sale of Public Service of Colorado for purchase (on the market or by tenders at prices not exceeding par) of its debenture 5½s.

FINANCIAL NEWS AND COMMENT





What Others Think

Voluntary Conservation Gets Another Chance



THE seven industries involved in the government's voluntary conservation program to conserve coal, oil, gas, transportation, man power, and critical materials have agreed to attack with new energy the problem of actually making the savings necessary to speed up production for the war. This assurance was given at three important meetings held in Washington, D. C., recently after thirty days' trial of the voluntary program had failed to show any great amount of additional savings in several of the industries.

The discussions had at the three meetings were viewed alike by industry representatives and government sponsors as having helped to clear the atmosphere and bring about a more united front. The discussions were frank and to the point and were sprinkled with minor clashes involving charges and countercharges with respect to responsibility for the success of the program. However, it was agreed that the frankness was helpful rather than harmful and certainly created a better understanding among those in attendance.

The meetings were those of the inter-industry committee, attended by top ranking executives of the seven industries concerned—coal, petroleum products, gas, water, electricity, communications, and transportation; the task committee of the electric power industry; and the informal advisory committee of the electric power industry.

BECAUSE of the slow progress made in the power industry conservation campaign, there were indications that the War Production Board would have to issue mandatory orders which would rigidly restrict the use of power for commercial and street-lighting uses princi-

pally. Such an order already had been prepared but was held up pending a trial to determine whether savings could be made on a voluntary basis. The War Production Board, through its Office of War Utilities, disliked the idea of issuing a mandatory order because of the difficulty of enforcement and the obvious resentment which might come from the public. But WPB insisted that the savings must be made—one way or the other.

It was pointed out that man power is exceedingly short, that there is an actual threat of a serious coal shortage this winter, and that critical materials—particularly tungsten, as far as the electric power industry is concerned—were getting tighter. It was also pointed out that private utilities produce 65 per cent of their power with fuel and that, regardless of capacity, there might be a shortage of power if there is a shortage of fuel. It was recognized that Secretary Ickes, in command of the coal and oil situation, might easily use the failure of the electric power industry to make a good showing in its voluntary conservation effort as a club to strictly ration fuel to the utilities.

It would be possible for him to order them to reduce their stockpiles, for example, to thirty days and limit them to fuel supplies amounting to, say, 90 per cent of their 1942-43 consumption. He might then say to the electric utilities: "You may now figure out your own way of effecting a 10 per cent saving, because you will not get any more fuel."

REPORTS have come in from many sections of the nation indicating that retail dealer stockpiles are low. And in many yards there is hardly any coal available for domestic distribution. In

WHAT OTHERS THINK

addition, the poorest classes of coal are being distributed for domestic and some commercial consumption, while all of the good coals are being diverted to war plants—such as steel mills and the like. If a real pinch in the domestic coal situation should develop this winter, the public would suddenly become cognizant of two distinct handicaps: First, the coal that they were able to buy might be of a low grade and produce less heat than normally might be expected; and, secondly, the supply would be short.

If the domestic consumer should become aware through any official announcement that it took large quantities of coal to produce electric energy, which was being wasted in commercial and street lighting, public resentment would be rife. In other words, if the public were to find out that electric energy was being wasted, and that they were being deprived of fuel partly because this fuel was being consumed to produce such wasted electricity, it would certainly back up any program to clamp down rigidly on the electric utilities.

The fault in failing to obtain appreciable results in the conservation program thus far cannot be laid entirely to the utilities. Much of it can be laid directly at the door of commercial users, who resented in many instances efforts to convince them that the saving of electric power was absolutely necessary.

As a result of all of this pro and con thinking during the six weeks or more since the voluntary conservation program went into effect, the electric industry's task committee drew up a 6-point plan for increasing the tempo of the campaign. This plan was adopted by the informal advisory committee of the industry, along with a promise that it

would renew its efforts to effect the necessary savings, and along with the assurance of the Office of War Utilities that it would extend for a reasonable time the trial period before further consideration of a mandatory order.

Here are the six points of the plan drawn up by the task committee:

1. Have national trade associations cooperate promptly and aggressively through their members in carrying out the conservation program (Sponsor: OCR).

2. Complete the setup of local 7-industry committees working through governors and mayors (Sponsors: Interagency and inter-industry committees).

3. Have regional directors of WPB represent Washington locally on the conservation program, designating a specific person from each regional or district office to do this (Sponsor: WPB).

4. Continue and intensify the transmission of government publicity to the press, to local chambers of commerce, to trade associations, etc., stressing the why of the program (Sponsors: Division of information, WPB, OWI, and secretary of the interindustry committee).

5. Have the electric industry groups named in § 3 of the task committee report of July 14, 1943, report to their members on the situation; advise them of the cooperation by other industries which is getting under way; ask those utilities which have not taken active steps to implement the conservation program with direct and effective local participation to do so at once; and urge upon all the necessary steps to carry the program forward (Sponsor: OWU).

6. Request the other six basic industries to tie in their advertising copy more closely with the broad national 7-industry conservation program (Sponsor: WPB).

The task committee and the advisory committee both expressed confidence that if the six recommendations were carried through vigorously, the voluntary electric conservation program would be a success within a reasonable period.

—C. A. E.

“It would be unfortunate if any of the managers of private industry were to be attracted by the idea that a little cartelization, either wholly in private or jointly in private and government hands, were desirable. Such a scheme won't work.”

—EDITORIAL STATEMENT,
The Wall Street Journal.

Threat of Socialization Hits Many Industries

SAMUEL W. MURPHY, president of Electric Bond and Share Company, told stockholders at their annual meeting in New York recently that while at one time the utility industry stood alone in the shadow of socialization, it now finds many other industries sharing its plight. He said it has been reliably estimated that one-fifth of the nonutility industrial facilities of the nation are now owned by the government, although in contrast only about one-eighth of the public utilities are so owned.

"As to the public utility industry," he said, "if government policy were such as to permit genuine integration, both physical and corporate, we venture to say that the government would find no great difficulty in disposing of its public utility plant to private investment and business management, thus securing billions with which to retire public debt and at the same time placing such plant on the tax rolls where a substantial contribution would be made annually to the support and further retirement of public debt."

Speaking of the power industry's war record, Mr. Murphy said that kilowatt hours of power and cubic feet of gas are invisible but vital ingredients in practically every item of war export and civilian supply. "Every ship and plane," he said, "every tank, every gun, practically every article of the manifold paraphernalia of modern war that leaves these shores carries in its design, fabrication, and assembly, kilowatt hours of electricity and cubic feet of gas to the far-flung battlefronts—the total is in terms of billions."

As for Electric Bond and Share system, he said, it has contributed to the national man-power supply by turning out record output with fewer employees and has built necessary new facilities with its own funds at a time when the war drain on the public treasury is staggering and when government financial assistance to war industries is the rule rather than the exception. All this, he stressed, has been done with a mini-

mum of critical materials and a minimum of demand upon the time and attention of the government war organization personnel.

Despite the huge expansion programs to meet this increased demand, and in the face of many other difficulties, Mr. Murphy said that the price of electric and gas service has continued to decline at a time when the price trend for almost everything else has been upward. Pointing out that this decline has been going on for decades, he added that "this is one industry and one business organization which has done a good job in 'holding the price line'—a 'rollback' of utility prices would actually raise prices rather than lower them."

With reference to the industry's 1942 tax payments of \$628,000,000, of which \$400,000,000 was Federal tax, he said that if the industry were socialized not only would the government have to borrow some \$15,000,000,000 to buy the industry from its present owners, but it would have to look to other sources of tax revenue to support the billions of public debt now supported by the tax revenues of the private utility industry. This, he asserted, would mean in effect that the government would have to ask remaining taxpayers to assume the burden of some \$35,000,000,000 of additional public financing.

MR. MURPHY called present tax laws a grave threat to public utilities for the following principal reasons:

1. Public utilities have always operated under profit ceilings due to the fact that such profits are based upon a fair return, if they are able to earn it, on the present fair value of the property devoted to the public service. Excess profits have always been eliminated by reduction in rates to consumers. Therefore, an excess profits tax applied to utilities is discriminatory and is in a sense a contradiction in terms.

2. Under present tax laws public

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"IT'S ONLY AN AMERICAN GAS AND ELECTRIC COMPANY ADVERTISING THEIR APPLIANCES, MEIN FUEHRER. THEY SAY THEY WILL BE GLAD TO DO THE LAST THING ON EARTH FOR YOU"

utilities are penalized by heavier taxes as debt and preferred stock liabilities are reduced, thus discouraging use of venture capital, *i.e.*, common stocks, and placing a premium upon high fixed charges while at the same time these companies are being urged to reduce their debts.

3. While the tax burden on utilities owned by private citizens and managed by businessmen has increased by leaps and bounds in recent years, due almost entirely to heavier Federal taxes, power projects owned and controlled by government continue to be exempt from Federal taxes, thus greatly encouraging public ownership of utilities.

If government power projects are to be used as yardsticks by which to measure performance of business-managed systems, Mr. Murphy declared their proponents should not insist upon special privileges such as exemption from Federal income taxes and excess profits taxes as well as tax exemption of their securities.

"We do not believe this double standard is either fair or wise," he added. "It carries a threat not only to the investors' stake in the industry, but to its continued existence as an enterprise owned by individuals and managed by businessmen, because in effect it places a high and artificial premium upon government ownership and operation."

Federal Tax Law Places Heavy Burden On Gas Industry

FEDERAL tax laws have placed a tremendous burden on the manufactured and natural gas industry, as well as upon all other utilities, which is out of proportion to the effect upon other industrial corporations, in the opinion of Arthur F. Bridge, president of the American Gas Association. Mr. Bridge, who is also vice president and general manager of the Southern Counties Gas Company, of Los Angeles, California, expressed his views in an address before the twenty-fifth annual meeting of the association in St. Louis, Missouri, on October 28th.

"That the [Federal tax] law in its present form hits public utilities harder than other industrial corporations is shown convincingly by a recent analysis in which the 1942 common stock earnings of ten of the largest companies in nine industries were compared with the corresponding average earnings for the period 1936-39," said Mr. Bridge. The study includes the following industries: the electric and gas utilities, railroads, steel, oil, aircraft, automobile, chemicals, metals, and motion pictures. All industries, said Mr. Bridge, except the public utilities showed substantial gains in 1942 over the past period, while the latter group declined 28 per cent and only one company of the ten had increased earnings.

Mr. Bridge declared that possibly the gravest potential threat to the financial stability of public utilities and a direct consequence of mounting income taxes is a disposition, particularly on the part of certain Federal regulatory agencies, to disallow as operating expenses taxes above the prewar level. The speaker pointed out that the principle of disallowing abnormal income taxes was first enunciated in several rate decisions during World War I, but was overruled by the U. S. Supreme Court in 1922 (*Galveston Electric Co. v. Galveston*) and was thereafter repudiated by several

state commissions which had initially adopted it.

MR. BRIDGE pointed out that the issue was revived by the Federal Power Commission in a decision involving rates of the Panhandle Eastern Pipe Line Company, in which he quoted the commission as follows:

So that there may be no confusion concerning the tax situation in connection with the companies subject to our jurisdiction, where necessary to stabilize utility rates at reasonable levels during the war emergency period, we propose to allow as proper operating expenses only such taxes as may be termed ordinary or normal. For the purpose of distinguishing between ordinary or normal and war emergency or abnormal taxes, we conclude that the basis prescribed in the 1940 Revenue Act establishes the highest level of Federal taxes which may be allowed as an element of operating expense for such purpose.

The Federal Communications Commission later adopted the same principle and it has been repeatedly urged by OPA in many rate proceedings before state commissions in which it has intervened, the speaker continued, adding that it should be noted that this exclusion has been advocated not only where rate increases were being sought, but also as a means of effecting rate reductions. Mr. Bridge declared:

The state utility commissions are divided on this doctrine, although several, notably Connecticut, Indiana, and Michigan, have definitely repudiated it in recent decisions. A digest of reported opinions submitted to the NARUC convention last month, based on a canvass of all the state commissions, showed 5 in favor of disallowance, 9 against, and 16 noncommittal.

Another variation of the same idea, which has found favor with some state commissions, is the reduction of rates (regardless of the resulting rate of return) to a point where no excess profits tax liability will be incurred. While the justification offered for this plan is somewhat different, the result to the utility and its stockholders is almost equally disastrous. This latter proposal became the paramount issue in a rate petition

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filed against the Detroit Edison Company by the city of Detroit, which was recently decided by the Michigan Public Service Commission. The company's brief in this case shows convincingly the unsoundness of both of these doctrines upon legal as well as equitable grounds.

The speaker said that he felt the language of the Michigan commission, in its opinion in this proceeding, concisely sums up the injustice and unwisdom of the disallowance theory.

He quoted the Michigan opinion in part as follows:

Under the laws of the state of Michigan, a regulated utility is entitled to earn a fair return upon the present value of the property devoted by it to public service. Money that has been lawfully spent in rendering service constitutes no part of such a return. The dollar paid out for taxes is no more available as income and return than a dollar spent for labor or any other legitimate expense. . . . We know of no statute giving us the power to forbid a company the right to charge as an operating expense any tax lawfully incurred by it . . . We therefore find that all taxes are a proper operating charge and they will be so considered in determining the income of the company in this case.

MR. BRIDGE said that natural gas companies were particularly hard hit by the Federal tax laws, explaining that under existing tax structure they are being penalized in proportion to their increased contribution to the national fuel requirements:

. . . This appears paradoxical but is nonetheless unfortunately true. Natural gas marketed by public utilities in 1943 will show an increase of 58 per cent over the immediate prewar period. Most of this goes to war industries—75 per cent of the additional sales being industrial. Since natural gas is an irreplaceable resource, it follows inevitably that the remaining life of existing reserves is correspondingly shortened. The present tax law makes no specific provision for this abnormal depletion or its resultant increase in cost of gas delivered to market. On the contrary, the indicated unit net income of the natural gas industry, after taxes for 1943, is approximately 30 per cent less than for the prewar base period 1936-39. In order to continue furnishing gas in the ever-growing volumes required to meet demands of war industry, these companies are forced to increase sharply their expenditures for leaseholds, exploration, drilling, compressors, and pipe lines.

He said it was essential that the tax law be modified to permit partial exemption from excess profits taxes commensurate with the accelerated rate of exhausting reserves, thus enabling natural gas companies to maintain their credit and to finance the betterments so vital in meeting our national fuel needs. He called attention to the fact that a special committee representing natural gas companies has prepared a brief and is seeking remedial legislation. He explained that the form of relief requested is recognized in the present statute and has already been accorded to other natural resource industries such as timber and mining. Turning to other aspects of the Federal Revenue Act of 1942, Mr. Bridge said:

One result of the ever-mounting corporate Federal taxes is to increase greatly the disparity in the tax burdens carried by consumers of privately owned *versus* publicly owned utilities. The privately owned utilities and their consumers are thus saddled with a handicap which already has reached an average of 25 per cent of gross revenue for Federal taxes alone. Despite the manifest discrimination created by this tax situation, particularly where such utilities are engaged in competition, I fear that no relief may be expected until the need for additional national revenue overbalances resistance to taxation by advocates of the publicly owned utilities.

Another related problem, affecting public utilities generally, is the wide variation in the incidence of the excess profits tax upon rate of return, and in certain extreme cases, the depression of earnings to the point of credit impairment. While the excess profits provisions of the act were ostensibly devised to recapture war-created, and therefore *abnormal*, corporate profits, they have nevertheless gravely reduced the *normal* equity income of many utility companies. A recent analysis of the 1942 tax returns of 14 major gas, electric, water, and telephone utilities in California, after adjustment for nonrecurring items, disclosed that the point of incidence of excess profits taxes ranged from 4.67 per cent to 9.58 per cent upon the depreciated historical rate base. Because of the 81 per cent rate, this tax virtually confiscates earnings above the point of incidence.

THE speaker reviewed the development of the gas industry, during the last twenty-five years particularly, and noted that the natural gas branch had

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grown from an infant of 2,500,000 customers in 1918 to 8,500,000 in 1943. Meanwhile, the sister industry, manufactured gas, he said, gained 67 per cent in customers during this same period. Total gas sales by the entire industry in 1942 were approximately 3.4 trillions of cubic feet, representing an increase of 247 per cent over 1918. He continued:

When the American Gas Association was organized, to use the words of our first president, Honorable George B. Cortelyou, "we were in the grasp of economic conditions for which we were not responsible and over which we could exercise but little influence." He referred to the mounting costs of operation due to war inflation of prices for materials and labor, and the difficulties of securing rate increases to keep step with changes. If the situation in 1918 required a united front, subordination of individual objectives, and the best thought of everyone in the industry, how much more the current situation demands these same qualities in 1943.

Now, if ever, we must stand together.

Noting the problems of transition from war to peace economy, Mr. Bridge declared that only vision, intensive analysis, and careful planning can steer the industry safely through the ordeal of reconversion and accomplish a sound economic readjustment. He added:

This need imposes a grave responsibility upon those in executive positions. We must weigh carefully both our present situation, and our probable position at the end of the conflict so far as we can now foresee it. It is, therefore, quite fitting that our General Sessions Program Committee, under the capable leadership of Harry Wrench of Minneapolis, has devoted this annual meeting to discussion of war and postwar problems.

Our Committee on War Activities has from its establishment in 1942 been led by Ernest R. Acker, whose devoted services to the industry in a critical period will long be remembered. The Postwar Planning Committee headed by Alexander M. Beebe, and thoroughly representative of the entire industry, has done an outstanding job of appraising the factors with which we shall have to deal when the war ends. . . . Our association's most valuable assets are men such as these, who are willing to devote themselves, their time, and their talents to our common cause. Among the subjects explored by the members of Mr. Beebe's committee . . . are: the scope and character of markets, changes in purchasing power, and methods of retaining customer acceptance of our product.

THE speaker took cognizance of the fact that the industry's competitors have been exceedingly active in developing new appliances and preparing for the resumption of sales activities and noted that the gas industry had collectively expended large sums and much effort to develop markets for gas and to promote customer good will. He urged, therefore, that the industry be most diligent in devising means of holding and expanding its markets when peace is restored. He said that one of the most promising of the new tools which will be available is the year-round air-conditioning unit, an appliance which, he said, is now being perfected and which with effective promotion should provide a substantial and much needed addition to off-peak load.

Commenting on the research activities of the association, Mr. Bridge declared:

As a member of the Laboratories Managing Committee I have for many years maintained a close contact with direction of the laboratories and a keen interest in their welfare. Until recently the principal function of our laboratories has been the testing of gas-burning appliances in the interest of the consuming public. Government restrictions and universal conversion to war production have so curtailed the manufacture of such equipment, that testing and approval activities have been almost suspended. Anticipating this condition, plans were laid in 1942 for effectively utilizing the laboratories' technical staff and special facilities in supplying engineering services for war products. After months of research, a special oxygen-regulating device was developed for use in airplanes. In October, 1942, our association was awarded a contract by the Army Air Forces for 25,000 of these regulators. Engineering and testing services are supplied by the laboratories, these constituting their major war project to date.

In addition a number of research and development contracts awarded by the War and Navy departments, and other agencies of the Federal government, are now in progress. Briefly, they involve devices for control and regulation of gases. Special apparatus to maintain a constant gaseous atmosphere in range finders, developed as the result of one of these assignments, has been approved by both the Army and Navy, and early award of a production contract by the War Department is expected. Plans call for the laboratories to test all production models prior to acceptance and to provide other en-

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"WELL, IT LOOKS LIKE OLD BUNNYNOSE HAS STARTED ANOTHER 'SITZKRIEG'"

gineering services as required. Present war work will thus be considerably expanded, necessitating use of facilities of the Los Angeles laboratory.

He explained that in addition to the responsibilities brought about by direct war assignments, the laboratories are now engaged in the most extensive research activities in their history. During the year, he said, the scope of the research program sponsored by the committee on domestic gas research was enlarged and additional funds assigned the laboratories for its conduct. Its objective is the early completion of extensive fundamental research designed to aid the development and improvement of domestic gas-burning equipment which

will be manufactured in the postwar period. It is agreed that the industry's future domestic load, Mr. Bridge pointed out, depends in large degree upon its ability to continue to supply the public with new types of equipment encouraging the latest features of design and most effective means of fuel utilization.

He commended the gas industry for having a home service department well established and functioning when the war started. He said no other representatives of the industry have contributed more to community life and national welfare under war-time conditions. He called them missionaries of good will through essential service and information furnished to the public and coöperation

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with many local and national organizations. Among the home service programs, Mr. Bridge mentioned aiding the government programs of home nutri-

tion, nutrition in industry, and conservation of fuels and appliances, as well as providing information on food rationing. —C. A. E.

New "FURA" Volume Released

THE publishers of "Federal Utility Regulation Annotated" announce the release of Volume 2 of that service. This is the second of a series of volumes dealing with Federal aspects of public utility regulation. It is devoted to an analytical summary of the work of the Federal Power Commission in the administration of the Federal Power Act and the Natural Gas Act. The work of the commission in the administration of the earlier Federal Water Power Act is treated in so far as it is pertinent to problems presently arising under the Federal Power Act.

The increasing importance of Federal regulation of public utilities has made it necessary to make available in convenient form the statutes and rulings of the Federal Power Commission. The usefulness of this volume, however, is not limited to those who are subject to regulation by this commission, since the commission operates under laws similar to those under which the state commissions act. Both Federal and state commissions have corresponding powers and duties with respect to such matters as accounting, security issues, property transfers, rate making, and the enforcement of service obligations. Rulings by the Federal Power Commission are, therefore, important precedents for consideration in regulatory proceedings before state commissions.

This volume contains the Federal Power Act and the Natural Gas Act, with their amendments, and, in addition, summaries and discussions of decisions by the commission and the courts interpreting and applying each section of the law. The rules and regulations of the commission governing the administration of the law, together with the prescribed accounting practice, are included.

IN addition to rulings under these acts there are included judicial interpretations of the Commerce Clause of the Constitution affecting gas and electric utilities—constituting a background for Federal regulation. Supplemental annotation will be issued with such frequency as to provide comprehensive data on current action. A back pocket flap is provided for this purpose.

This volume was originally designed to cover the period ending January 1, 1943, but because of the importance of certain court decisions—affecting previous commission action—during the first six months of 1943, references to these decisions have been included. Some idea of the up-to-date character of this volume can be obtained from the very fact that its roster of commission officials makes note of the recent appointment of Commissioner Nelson Lee Smith.

The summarization of decisions must not be regarded as a substitute for the full text of the opinions, which are available in published form in FPC volumes and selectively in *Public Utilities Reports*.

As a foundation for basic reference, it is effectively supplemented by *FURA Current Service (FPC)*, which brings to its subscribers prompt notice and analyses from month to month of all decisions, litigation, and other developments affecting the work of the FPC.

The new "FURA," Volume 2, is composed of 957 pages. It contains not only a comprehensive subject index but also an exhaustive table of commission cases and court decisions, together with convenient thumb notches for ready reference. The cost of the new volume is \$12, as in the case of "FURA," Volume 1, published a year ago, on the SEC.

The March of Events

AGA Convention

It was a well-attended convention of the American Gas Association which convened in the Hotel Jefferson in St. Louis on October 26th. The sessions extended through October 28th. Attendance was surprising in view of the fact that an eleventh hour postponement had to be made in the original convention date to avoid conflict with the World Series baseball games held earlier in the month in St. Louis.

The address of the president of the association, Arthur F. Bridge, is reviewed elsewhere in this issue (page 640). Another principal speaker at the convention was Bert R. Bay, president of Northern Natural Gas Company and chairman of the association's natural gas section.

The record shows, Mr. Bay pointed out, "that the natural gas industry has not only continued to supply the essential needs of the 8,500,000 homes and business establishments using natural gas together with a substantial portion of the gas fuel requirements of almost 2,000,000 additional customers who used mixed gas, but that it has furnished ever-increasing quantities of natural gas for use in war manufacturing processes.

Ernest R. Acker, president of Central Hudson Gas & Electric Corporation, was elected president of the Association. J. French Robinson, president of the East Ohio Gas Company, was elected vice president.

Coastal Dim-out Ended

DIM-out regulations that have blanketed New York city and the rest of the coastal areas of the East, West, and Gulf of Mexico, have been canceled, effective November 1st, it was announced in Washington October 27th. The Army, Navy, Office of Civilian Defense, and the War Production Board joined in the announcement, which they said had been made possible by the successful campaign against U-boats operating in coastal waters.

Replacing the current blackness, they said, would be a voluntary semidim-out described as a "brown-out." The latter is a compromise between the full electrical radiance of prewar New York and the funeral dim-out of the last year that required citizens in coastal cities to grope their way about the streets of their communities.



Plot Afoot to Oust SEC?

PRESIDENT Roosevelt recently charged that there is definitely an undercover effort on the part of certain elements in many parts of the country to get rid of the Securities and Exchange Commission and get back to what these elements regard as the good old days.

The President made his accusation in announcing the resignation of Edmund Burke, Jr., as one of the five members of the commission and the appointment of Robert K. McConaughy, a lawyer, of Dayton, Ohio, as his successor. Mr. McConaughy, who is thirty-eight years old, first came to Washington in the office of the general counsel of the Agricultural Adjustment Agency in 1934. He became associate solicitor of the farm credit division of the Department of Agriculture in 1941.

Abolition of the Securities and Exchange Commission is one of the steps necessary to promote peace-time reemployment, according to Dr. Benjamin M. Anderson. Writing in the October 21st issue of the *Commercial and Financial Chronicle*, Dr. Anderson, professor of economics at the University of California and former economist for the Chase National Bank, declared that "access to the capital market is badly hampered by our securities and exchange legislation and by the rules and practices of the SEC. New capital issues, and above all new stock issues by American corporations, have been appallingly low since the middle of 1933."

Dr. Anderson suggested that the Department of Commerce, through a subordinate branch, could administer the provisions of security issue registration while the Justice Department could adequately handle the prosecution of frauds arising from misstatements, etc., in security transactions.

Dam Tentatively Approved

THE House Rivers and Harbors Committee, acting on western navigation works, last month tentatively approved the \$50,000,000 Umatilla dam on the Columbia river. On motion of Chairman Mansfield, Democrat, Texas, however, the committee skipped a \$30,000,000 authorization for improvement of the Snake river from its mouth to Lewiston, Idaho. Approval of this project was withheld in line with Mansfield's proposal to keep controversial items out of an omnibus bill to be introduced

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after hearings which are now in progress.

The chairman said there was no controversy over recommendations of the Army Engineers that the Umatilla dam was needed for navigation, power development, and irrigation. The dam also would regulate the flow of water and thereby increase the value of the hydroelectric plant at Bonneville, 150 miles downstream, the engineers said.

Action of the committee on all the works is subject to a later vote when the bill is drafted. Mansfield's plan is to approve non-controversial items as part of a public works program to provide jobs after the war. The bill will carry no appropriation.

Court Sustains SEC

THE U. S. Circuit Court of Appeals last month made public a decision upholding denial by the Securities and Exchange Commission of petitions by the Koppers United Company, Koppers Company, and the Eastern Gas & Fuel Associates of New York city.

Koppers United asked the commission to declare the Brooklyn Union Gas Company is not its subsidiary. Eastern asked to be declared not a subsidiary of Koppers Company. Koppers Company asked to be declared not a holding company as regards both Brooklyn and Eastern.

"We think it appears that the commission's findings (of denial) are supported by substantial evidence," the 3-judge court stated unanimously.

The third U. S. Circuit Court of Appeals had also declined to annul an SEC order permitting a minority group of North American Light & Power Company's stockholders to file a "statement of claim" against Light & Power's parent concern, the North American Company. The court held in dismissing Light & Power's appeal that the SEC order is "interlocutory" and not appealable.

The "statement of claim" was filed by Lawrence Condon of New York in an effort to pass on to North American any damages that might be assessed against Light & Power as a result of a \$30,000,000 suit brought against the latter by Illinois Iowa Power Company.

"Death Sentence" Appealed

An appeal from the Securities and Exchange Commission's "death sentence" order was filed recently in the third U. S. Circuit Court of Appeals by the Cities Service Company.

Although no details of the appeal were available at the time, it was believed the company contended that the SEC had overstepped its power and that it challenged the constitutionality of the order which was handed down by the commission in August.

The SEC order, which would strip the \$420,000,000 holding company of all but a fraction of 47 companies, gave Cities Service Power & Light, major utility unit of Cities Service

Company, the choice of one of three integrated systems, but designated the Ohio group as being the only one retainable if the company did make a choice within fifteen days. The company failed to select its choice and the order became final.

The Ohio group consists of the Toledo Edison Company, Ohio Public Service Company, and Alliance Public Service Company.

Voice Tax Relief Plea

RELIEF from the present provisions of the excess profits tax law, which are discriminating against the natural gas industry to an extent which may seriously interfere with future production for war purposes, has been asked by representatives of the industry.

I. J. Underwood of Tulsa, official of the Oklahoma Natural Gas Company, testified last month for the industry before the House Ways and Means Committee and warned that "disaster will result if relief is not granted." At the same time he submitted a formal brief for the industry outlining need for the requested relief and suggesting methods by which it could be granted.

The industry, under the present law, has been forced to increase its production to meet war needs, but it is allowed practically no profit from the increased depletion of its exhaustible capital asset—natural gas—Underwood explained to the committee.

Underwood pointed out that natural gas production in the United States has jumped 40 per cent since the outbreak of the war, and he estimated that four-fifths of this increase is directly attributable to the war.

Since the industry is under government control, rates charged per unit cannot be increased so that the profit per unit of the larger production remains the same, Underwood explained. But with no allowance from the high excess profits taxes for this increased production, the industry is being severely penalized for its increased war-time production, which in the end will reduce its ability to produce during normal times.

The industry, he told the committee, "does not ask to be relieved of any part of the normal income or surtax, or to be exempted from all excess profits taxes, but requests that the present excess profits tax be collected so that it will not burden it far more than it does taxpayers who do not derive all of their earnings from the recovery and marketing of exhaustible natural resources.

"We merely seek the right to retain a reasonable part of the earnings attributable to this increased business so that we will be able to finance the construction of new pipe lines to such new sources of supply," he added.

Underwood insisted that increased profits on this increased production of natural gas do not represent excess profits. "It really amounts to a confiscation of our capital," he declared.

THE MARCH OF EVENTS

Supreme Court Defers Case

BECAUSE the United States Supreme Court could not muster a legal quorum of six to pass upon issues affecting the life or death of the North American Company and the Aluminum Company of America, the highest tribunal on October 18th ordered the cases suspended until a quorum could be found. This was said to mean indefinitely.

The court set no time limit, stating that as four justices had disqualified themselves, and thus there was no quorum, the two cases would be "transferred to a special docket and all further proceedings in each case is postponed until such time as there is a quorum of justices qualified to sit in it."

Such a quorum could be obtained only if one of the nine justices was succeeded by a new man, if one of the self-disqualified four changed his mind, or if Congress passed legislation altering the quorum number. Meantime, North American has proposed plans for its own dissolution.

The situation is said to have stimulated action in Congress relating to a bill to make the quorum for the court a majority instead of the present six. Such a plan is favored by Francis Biddle, the Attorney General, and Charles Warren, the unofficial historian of the court.

The bill, as introduced by Senator Joseph C. O'Mahoney and Representative Hatton W. Sumners, chairman of the House Judiciary Committee, specifies that the court shall consist of a chief justice and eight associates, "a majority of whom shall constitute a quorum."

Offers Florida Canal Bill

REPRESENTATIVE Hendricks of Florida last month introduced a bill providing funds for immediate construction of the Florida barge canal, estimated to cost \$44,000,000. He said the East would continue to suffer from lack of gasoline and fuel oil supplies unless additional transportation facilities were provided. The canal would free tank cars for distribution purposes in the Middle East and to points inland from the Atlantic seaboard, he added.

Protests Attack

MONTREAL Light, Heat & Power Consolidated, in a statement issued last month, said that the purpose of the Quebec government in seeking legislation leading to expropriation of the company seems to be "to destroy the credit and value of an important public utility of this Province."

The statement said the company had been built up as a public utility over a period of fifty years "by strict compliance with the laws of the Province, and today is recognized generally as being the most economically operated public utility of its kind on this continent,

with a present credit standing superior to that of the Province itself."

The statement added that the investing public should ask Prime Minister Joseph Adelard Godbout of Quebec why, in attacking the company, "he has proceeded upon the assumption that the company will not be able to justify its position before the public service board, or, in other words, why he has prejudged the case."

The company has been advised it is to appear before the public service board on November 14th to show cause why its power rates should not be reduced. Premier Godbout announced his government would seek expropriation of the company a few hours after the ruling of the board was made public.

The company's statement said the Premier had failed to recognize the fact that the Province itself, as a means of stimulating competition in the electric field, "freely granted charters to any person willing to go into business, and consequently was responsible for the creation of a large number of uneconomical units involving, literally, forests of duplicate pole lines in the area served by the company."

"The company had no alternative," it added, "but to meet and solve the condition resulting from such a policy, and in the course of time succeeded in merging these several competing units into one integral system having for effect the elimination of waste . . . followed by the periodic reduction of rates."

Chile Plans Electrification

ONE of the most ambitious projects ever attempted by a South American country for the electrification of its territory, contemplating the investment of close to \$100,000,000 over a period of eighteen years, was announced at Santiago on October 25th.

The plan, which provides for harnessing the principal rivers for the production of low-cost hydroelectric power down nearly the whole length of Chile's 2,600 miles bordering the Pacific ocean, was disclosed in a statement put out by the "corporation for the development of production" which will be responsible to a great extent for the financing of the project.

The proposed financial setup includes capitalization for the first stage of the project of 500,000,000 Chilean pesos (\$20,000,000 United States currency), of which 450,000,000 pesos will be underwritten by the corporation for the development.

The announcement explained that progressive industrial development depends upon the mechanical power available and that it is necessary to consider that reserves of low-priced coal, which so far have been an important factor in Chile's past development, may not be counted on indefinitely. It declared "Chile must have the energy to put in motion its economic resources."

The plan calls for division of the territory

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into seven sections from Arica southward. The last two sections, which include the area between Puerto Aysen and the Straits of Magellan, have not yet been explored for the purposes of hydroelectric development.

That part of the plan which is in final form calls for initial production of about 6,000,000 kilowatts. The expected investment up to 1957 is put at about 2,400,000,000 Chilean pesos.

New Zealand's Power Plans

A 10-YEAR plan for increasing New Zealand's already large national hydroelectric

supply organization was approved by the war cabinet recently. It will cost \$100,000,000 and be started as soon as conditions permit.

The program calls for the erection of three stations on the Waikato river of 150,000 kilowatts, 100,000 kilowatts, and 80,000 kilowatts. An existing station is to be enlarged. It is also planned to have long-distance power lines carry 220,000 volts instead of 110,000 volts as now.

The plan centers on populous and industrially advanced North island. South island expansion is to follow, but on a much lower scale.

Arkansas

War Electrification Discussed

EXTENSION of electrification to Arkansas farms in war time and after the war was discussed by the members of the board of directors of the Arkansas State Electric Cooperative at Little Rock last month.

Following relaxation of war-time regulations on priority materials by the War Production Board last February, approximately 500 Arkansas farms have been given electrification, J. T. Robertson, Jonesboro, state co-operative chairman, said. The association has been permitted to place electricity on farms in

an expanded war food production program planned by the farmers and co-operative officials, Mr. Robertson said.

Materials already available through co-operatives are used.

Approximately 85 per cent of the farms in the state are not electrified. The problem now is to aid in war-time food production and to plan for postwar expansion, it was pointed out.

E. E. Karns, director of the Rural Electrification Administration's application and loan division, St. Louis, Missouri, discussed extension of power lines in Arkansas following the war to operate farm and dairy equipment.

California

City Water Rights Upheld

ANCIENT "pueblo" rights granted to the city of Los Angeles by the King of Spain to the waters of the Los Angeles river were upheld last month by the state supreme court, which gave the city full rights to waters of the San Fernando valley.

The ruling was another milestone in litigation brought by the cities of Glendale and Burbank seven years ago in a dispute over the water rights of the valley. The high court found that Los Angeles has prior rights on all the flood waters of the Pacoima and Tujunga creeks as well as other streams in the region.

Lower courts had upheld the cities' rights to waters brought from the Owens valley which reached underground basins of the San Fernando valley through use in irrigation or through spreading grounds. However, the courts had held that water which reached the underground storage through conservation by the Los Angeles Flood Control District was open to appropriation by anyone who has access to it.

In their suits, attorneys for the cities of Glendale and Burbank attempted to prove that

Los Angeles has title only to the normal flow of the water in the Los Angeles river and not to the impounded water.

Testimony before the supreme court showed that Glendale had spent \$5,000,000 and Burbank \$2,000,000 in water development, but the court held the fact that they had been using the water did not affect the prior rights held by Los Angeles.

Franchise Approved

THE Los Angeles board of public utilities and transportation has approved the ordinance before the city council which would give the Pacific Electric a franchise until May, 1947, to operate its electric cars to connect with the present Aliso tracks eastward.

Stanley M. Lanham, chief engineer for the board, reported that traffic congestion would be eliminated by the rerouting. Lanham also stated that tracks on Aliso street would not affect the plans for extending the Ramona Freeway by way of Aliso westward, to connect with the proposed Santa Monica Freeway by passing under Los Angeles and Main streets.

This freeway extension cannot be made un-

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til after the war, according to Lanham, and in view of the fact that the Pacific Electric favors replacing electric cars with motor coaches, the rails may no longer be needed then.

Bus Strike Ended

APPROXIMATELY 200 bus drivers of the Santa Fe Trailways system voted unanimously in Los Angeles on October 14th to go back to work at noon the following day, ending a strike that began on October 8th, halting service in California and stopping it partly in Arizona, Utah, and New Mexico.

The drivers voted to return on the plea of L. J. Pierce, local chairman of the Brotherhood of Railway Trainmen, whose discharge by the company caused the walkout.

Lon Charles, chairman of the local's grievance committee, said the back-to-work decision was wired to Gene L. Green, tenth regional War Labor Board director in San Francisco, and that Pierce's case had been placed before the board for final action as to his reemployment.

The company contended Pierce was discharged for insubordination while officials of the local brotherhood asserted it was for union activity.

Colorado

City Files Data

THE franchise of the Public Service Company of Colorado to distribute gas and electricity in Denver expires February 8, 1947, and only the voters of the city have the power to grant a new franchise, Mayor Stapleton and City Attorney Lindsey said recently in a statement prepared for filing with the Securities and Exchange Commission in Philadelphia, Pennsylvania.

The SEC was scheduled to open a hearing October 20th on an application by the Public Service Company and its parent concern, the Cities Service Power & Light Company, to sell 875,000 shares of Public Service common stock to the public at \$20 a share, par value, to carry out a government order requiring Cities Service to divest itself of Public Service ownership.

The statement of the mayor and city attorney was sent to Philadelphia to be included in the record of the hearing. It said:

"So far as we can understand, the proposed

hearing and any decision had thereas will not affect franchises or rates for services and only goes to the question of offering certain securities to the public.

"If our understanding is correct, then, in the interest of the public, we wish to call attention to the following facts:

"1. The franchise of the Public Service Company of Colorado for the distribution of gas and electricity in Denver will expire February 8, 1947.

"2. Denver is a home rule city created by Article XX of the Constitution of Colorado, and the Colorado Supreme Court has held that even the Colorado Public Utilities Commission has no power or jurisdiction in regard to the regulation of rates in Denver; but that all such matters are governed by the Denver charter and ordinances passed pursuant thereto.

"3. The Denver charter provides that the granting of franchises and the regulation of rates of public utilities shall be by vote of the people."

District of Columbia

Wage Increase Denied

A 2 per cent wage increase proposed for 1,400 employees of the Washington Gas Light Company and its subsidiaries was turned down last month by a 6-to-3 vote of the regional War Labor Board, with labor members dissenting.

The regional board, sitting in Philadelphia, found that "present rates paid this group of workers already compared favorably with the earnings of workers engaged in similar occupations in the area." The group had about exhausted the increase due under the WLB "Little Steel" formula, it was explained.

The gas company wage increase was requested jointly by the company and the fol-

lowing unions: District of Columbia Gas Workers Union, independent; Northern Virginia Gas Workers Union, Local 22,607, AFL; and Washington Suburban Gas Company Employees Association. The Washington Suburban Gas Company, Montgomery county, Maryland; Rosslyn Gas Company, Rosslyn, Virginia; and Prince George's Gas Corporation, Prince Georges county, Maryland, also were affected.

The proposed increase, under an "escalator" clause calling for stated increases with each rise in the cost of living, would have gone to all employees paid less than \$300 a month. WLB has announced a policy of "terminating" escalator clauses which might operate to have an inflationary effect.

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Indiana

Rate Cut Approved

THE state public service commission last month announced rate reductions of \$276,000 annually for small commercial consumers of the Indianapolis Power & Light Company, effective November 1st, along with other downward rate adjustments approved July 2nd. The reductions were said to be the result of an agreement schedule between the commission and officials of the utility. Serving to equalize rates between small commercial and residential consumers, it will affect 14,000.

George Beamer, chairman of the commission, said that with the reduction the composite rate structure "has been brought more nearly into line in these various rate classifications."

He said that in working up the new structure abnormal power consumption by defense operations and certain other operations were considered.

Tax Boundary Case

THE state supreme court was scheduled to hear oral arguments on October 29th in the Perry-Decatur township jurisdictional fight over taxing the \$8,000,000 Indianapolis Power & Light Company's Harding street plant.

Perry township appealed the decision of Judge John H. Morris, of Henry county, who upheld a 1943 act restoring an old boundary between the two townships and shifting the plant to the Decatur township tax duplicate.

Kansas

Wage Increase Ordered

THE regional War Labor Board said recently it had ordered that employees of the Kansas Electric Company, Lawrence, covered by union contract, should receive general increases of 5.5 cents an hour in pay, retroactive to April 1, 1943.

The order, the board said, applied to about 60 per cent of the 290 employees of the com-

pany who are represented by the International Brotherhood of Electrical Workers, AFL.

In addition, the board's directive required the company and union to incorporate the standard maintenance of union membership clause in their contract, the board said, and also to include a standard arbitration clause providing for arbitration of grievances and disputes relating to interpretations of the contract.

Missouri

Municipal Ownership Plan

MUNICIPAL utility legislation, defeated in the 1933 state legislature, was presented on October 20th to the Constitutional Convention at Jefferson City in abbreviated form for inclusion in the proposed state Constitution.

Wade W. Maupin, delegate from Carrollton county, who as city attorney of Carrollton overcame efforts of privately owned utilities to prevent construction of a municipal electric plant and water plant, introduced a proposal to permit any city, town, or village in the state to build or acquire any utility or other revenue-producing public improvement

through the issuance of revenue bonds authorized by a majority vote.

The proposal, if adopted and approved by the voters as a part of the Constitution, will be a decisive defeat for privately owned utility lobbies, it was said.

While the law has permitted cities of more than 75,000, of which there are only three in the state, to acquire utilities by a majority vote, cities and towns of smaller population have encountered many difficulties through requirements of the Constitution for a two-thirds vote to incur liability that would make the municipal indebtedness more than 5 per cent of the assessed valuation.

Nebraska

May Acquire Title

WHEN the bonded obligations of the Consumers Public Power District are paid

any city or village served by it can acquire title to the distribution system in that community by payment of \$1, General Manager V. M. Johnson said recently.

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Declaring the district provides the quickest method for Nebraska to acquire a "debt-free, statewide utility system, . . . bringing to all of the communities the economies that result from combined operations," Johnson said Consumers' directors at their meeting October 5th passed a resolution whose purpose "is to make clear statements frequently made by the district" of its willingness to convey title to distribution systems to the respective cities and villages when the bonded obligations of the district are paid.

The district, he said, is a political subdivision controlled by the legislature, which "considers itself . . . as being a public, cooperative, mutual, nonprofit organization, dedicated solely to supplying electrical energy to the communities and customers which it serves in the state." It is prohibited by law, he said, from transferring its property to any private person, firm, or corporation.

Johnson pointed out the district is paying to government subdivisions in lieu of taxes "the same amounts of money which were paid in taxes by the private corporations before they were acquired by the district," and in the nearly two and one-third years of its operation has paid off, "or has money in sinking funds to pay off," more than \$3,000,000 of the bonds representing the cost of the properties it has purchased.

Declaring the district is "retiring its bonds regularly" with the aim of giving the state a debt-free statewide utility system, Johnson asked "the cooperation of all cities and villages to obtain these objectives."

Wants Suit Dismissed

GLENN A. BEES had on file last month in district court an intervenor's suit in the condemnation court be quashed and dismissed Power, District against the city of Kearney. Bees asked that the proceedings before the condemnation court be quashed and dismissed and if the court fails to do that to proceed

with a hearing on his case, taking evidence to determine a "fair and reasonable price" to be paid by the city, including severance damages. Bees, describing himself as a bondholder, contended that by reason of the condemnation award he was about to be deprived of his property without just compensation, contrary to the Constitution. He suggested as a fair price at least \$750,000.

The condemnation court set a price of \$271,000, plus \$5,975 for furniture, fixtures, and transportation equipment, plus \$25,000 to be paid if the city ceased to buy power from the district within ten years.

Consumers Buys Plant

CHARLES B. FRICKE, president of Consumers Public Power District, announced last month that Consumers had acquired the Spencer hydro generating plant formerly owned by the Nebraska Hydro-Electric Company. The basic purchase price was \$455,000, expected to reach a maximum of \$500,000.

The purchase means, said Fricke, that Consumers has now acquired substantially all the electric generating facilities formerly owned by private power companies in the state of Nebraska, except Omaha, and is operating and maintaining such properties as a public agency for the benefit of electric users.

The entire output of the Spencer hydro plant has heretofore been purchased by Consumers.

"By acquiring the properties, the district will be reducing the power cost of the northeastern Nebraska division by about \$20,000 a year after payment of all expenses of operating and maintaining the hydro plant and paying interest and retiring the revenue bonds issued to pay for the property," said Fricke.

The purchase of the Spencer hydro was contemplated at the time Consumers purchased the Interstate Power Company in 1940 and sufficient bonds were authorized for this purchase.

New York

Utility Charge Changed

THE state public service commission last month announced a new line extension plan by the New York State Electric & Gas Corporation under which the minimum monthly charge is reduced to \$2 a customer, regardless of the length of the extension. Under existing schedules, the minimum monthly charge increases for extensions beyond 660 feet a customer. The commission said the revision would save rural users \$35,000 annually.

Similar plans have been allowed for the Niagara Hudson system and the Rochester Gas & Electric Corporation, making 85 per

cent of the state franchise area now covered by the plan, with total savings of upward of \$100,000 annually to customers of the three utilities, the commission said.

The New York State Electric & Gas Corporation serves more than forty counties in the state.

Railroads Upheld

THE court of appeals on October 14th unanimously upheld the right of three railroads to increase noncommutation passenger fares 10 per cent in New York city. The decision of the state's highest tribunal

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reversed a lower court decree sought by the transit commission which enjoined the railroads from instituting a 10 per cent increase of fares in the New York city area, originally scheduled for effect in February, 1942.

The transit commission, formerly the metropolitan branch of the state public service commission, since has been abolished and its duties have been taken over by the state commission.

The Long Island Railroad Company, the Staten Island Railroad, and the New York Central Railroad contended the increase was required by an Interstate Commerce Commission order of January 21, 1942, which "had the effect of barring state authority." An increase of interstate rates, authorized at that time, made necessary a corresponding rise in intrastate rates, the companies asserted.

North Carolina

Gas Sale Approved

THE state utilities commission recently approved the sale of the Raleigh, Durham, and Asheville gas companies to C. B. Zeigler, of Gastonia, operating as the North Carolina Public Service Company, Utilities Commissioner Stanley Winborne said.

Winborne said that the purchase price for the Durham and Asheville properties was \$453,000 plus assumption of obligations of the two companies, while the price involved in the deal for the Raleigh company was \$203,000 and assumption of obligations of the company. The Raleigh sale would be submitted to the SEC for approval.

Pennsylvania

Commission Approves Sale

THE Pennsylvania Power & Light Company, Allentown, on October 15th had authorization from the state public utility commission

to become the sole owner of the Edison Illuminating Company of Easton.

The acquisition was assailed by Commissioner Thomas C. Buchanan, only Democratic member.

Texas

Bond Proposal Rejected

VOTERS of El Paso on October 25th rejected a proposal that the city take over the El Paso Electric Company through the issuance of revenue bonds. The proposal to acquire the company, a subsidiary of the Engineers Public Service Company, was defeated by nearly 4 to 1, or 2,475 to 651.

In September, officials of Engineers Public Service, attempting to meet the "death sen-

tence" provisions of the Public Utility Holding Company Act, signed a contract to sell the El Paso Electric common stock to the city for \$6,847,000, subject to the approval of the voters.

According to reports on the referendum, employees of the company played a leading part in the defeat of the proposition, their position being that they would prefer to work under private management than to be transferred to the city payroll.

Utah

Court Grants Stay

THE state public service commission's order for an annual reduction of \$1,500,000 in the rates of the Utah Power & Light Company was stayed last month by the state supreme court pending final determination of the appeal from the order recently carried to the court by the company.

The order was to have gone into effect on October 15th, with reductions being distributed among various classes of power users according to a schedule adopted by the commission early last month.

In granting the stay, the court required the power company to furnish a bond of \$150,000, and to agree to pay monthly into an account standing jointly in the names of the power company and the commission an amount equal to the difference between the present rates and those ordered by the commission.

If the commission's rates are sustained by the court, this impounded fund will be distributed to UP&L customers on a pro rata basis, but if the present rates are upheld the money will revert to the company. The commission reported that the company had obtained bond required by the court.

The Latest Utility Rulings

Federal and State Powers in Relation to Merger of Telegraph Companies



THE New York commission certified its approval of the amendment of the certificate of incorporation of the Western Union Telegraph Company, pursuant to §38 of the New York Stock Corporation Law, but, in an opinion by Chairman Maltbie, discussed the respective powers of Federal and state commissions. Matters under state control had to do with the procedure to be followed in the issuance of securities which the Federal Communications Commission had authorized in approving the merger of the Western Union Telegraph Company and the Postal Telegraph, Inc.

Counsel for the company stated that, in passing upon or considering any phase of the application, the state commission could rely upon the findings of the Federal commission "very much as if it had passed upon the subject of the merger itself." Chairman Maltbie declared:

This is not and has not been the policy of this commission. If this commission has jurisdiction over a matter, whether exclusive or concurrent, we have not accepted as determinative the findings upon the facts made by another body. Findings have been made independently upon the record before this commission, and if in our opinion this commission had jurisdiction over the issuance of securities in this case, they would be passed upon in accordance with the standards which we have applied in similar proceedings.

He said that if the state commission had any function to perform in relation to the combination of the two systems and the wisdom of the issuance of the proposed securities, the commission would be unable to find upon the showing before it that the proposed plan was in the public interest. Its action in regard to the certificate change was not to be construed as approving directly or

indirectly the unification or the issuance of securities.

It was said to be difficult to understand how the Federal commission could approve the issuance of stock and make its findings effective, and the state commission still could find that the kind of stock to be issued and the rights to be conferred on stockholders were not in the public interest. Consolidation or merger might be wise and the price paid excessive, but the Federal commission had approved both.

Prior to enactment of the law permitting this combination the Federal Communications Commission, it was pointed out, had no authority to pass upon the issuance of securities by any telegraph company. Certain powers and duties relating to securities had been conferred by state law upon the New York commission. Discussing the question whether Congress has power to take from the states authority, which concededly they had possessed prior to enactment of the merger act, and transfer it to the Federal Communications Commission, Chairman Maltbie reviewed various judicial decisions and stated:

The rule is now well established that where Congress in the exercise of its constitutional powers passes an act conferring powers on a Federal body, the several states have been deprived of authority to confer the same powers on a state body.

... the Federal Communications Commission has construed the grant as complete, and we see no public advantage to be gained by challenging that determination at this time. ...

If the Congress has given the Federal Communications Commission authority to pass upon the issuance of securities by Western Union to the extent covered by the order, it follows from the cases cited above that the public service commission has no

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authority or duty to pass upon the same question. It should be stated, however, that we do not construe the act of the Congress as giving the Federal Communications Commission power to pass upon the issuance of all securities of Western Union, a New York corporation.

... the authority remaining in the public service commission regarding this specific matter is very limited. Western Union is a New York corporation. The state of New York certainly has authority to decide the procedure which a corporation shall follow

in conducting its business and performing its corporate functions. There are certain steps which the law requires every corporation to follow in dealing with its affairs as a corporation. Power over these matters has never been taken from this state and there is some question whether it can ever be taken from a state in the case of a corporation formed under state laws.

*Re Western Union Telegraph Co.
(Case 11286).*



Reserve for "Accelerated Retirements" Denied to Telephone Company

THE Missouri commission, in authorizing an increase in telephone rates, referred to "a rather unique phase" of the case involving a claim for "accelerated depreciation" to reimburse the company for anticipated loss of investment in equipment furnished temporary subscribers. An influx of population, owing to proximity of Fort Leonard Wood, had required during a 2-year period some 300 additional station installations. The increase in subscribers was about 40 per cent.

The commission pointed out that "accelerated depreciation" is a misnomer, for, said the commission:

Accelerated depreciation, as we are familiar with that term, refers to the hastened wearing out of property resulting from insufficient maintenance, from excessive use, or from a combination of these factors which reduce the expected service life of that property to a point below that previously assumed in fixing depreciation rates. Here the company makes no claim that the life of a property is shortened below normal but merely states that at some time in the future they will have on hand excessive not-in-use property which will not have been

retained in service long enough to have warranted the initial investment. The claim, therefore, should be characterized as "accelerated return of investment" or by some similar title.

The claim was said to be speculative. The property which the company claimed to have added for temporary customers did not serve a defense industry or a military post. It was not confined to a particular area, and, except for certain switchboard facilities, the particular units to be retired could not be identified.

Assuming that expansion was temporary, said the commission, it was not equitable that a long-time user of service should be required to pay the entire loss in extraordinary retirements brought about by temporary subscribers. The commission, therefore, found that the item for "accelerated retirements" was a risk of the owner and that the subscribers should not be required to establish a reserve for that contingency. *Re Missouri Standard Telephone Co. (Case No. 10284).*



Companies Not Required to File Rates for Service To District Condemning Property

THE department of public service of Washington has sustained demurrers to complaints filed by three public utility districts against power companies

to compel them to establish wholesale rates which would be applicable to the sale of electricity to the districts after completion of condemnation proceedings

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to acquire transmission and distribution facilities of the company.

Each district asserted that it had instituted condemnation action to acquire all electrical works, plants, and facilities now owned and operated by the company in certain areas, and that upon rendition of the verdict it will be necessary to determine whether the district can and should pay into court the amount of the award and take title to the properties or whether it must abandon the proceedings. As stated in the complaint in one of these actions:

If the properties are acquired, the acquisition will be financed entirely by the issuance of revenue bonds which will be paid for only out of the earnings derived from the properties. Before prospective buyers of revenue bonds can determine whether they will buy the bonds proposed to be issued, and before they can determine what rate of interest the bonds should bear, they must ascertain the probable net earnings of the properties under operation by the district, and they must decide whether these earnings are sufficient to provide for payment of the principal of and interest on the bonds

and whether there is sufficient excess over bare requirements to make the bonds saleable to their clients and to the general public. To determine these probable net earnings they must know what the district will have to pay for electric power.

Each company filed a demurrer upon the grounds (1) that the department has no jurisdiction of the subject matter of the proceeding, (2) that the complainant has no legal capacity to sue or to file said complaint, and (3) that the complaint does not state facts sufficient to constitute a cause of action or to entitle the complainant to the relief demanded in the complaint.

The department in each case, without discussion, sustained the demurrer. *Public Utility District No. 1 of Clallam County v. Puget Sound Power & Light Co.* (Cause No. FH-7723); *Public Utility District No. 1 of Douglas County v. Washington Water Power Co.* (Cause No. FH-7732); *Public Utility District No. 1 of Okanogan County v. Washington Water Power Co.* (Cause No. FH-7719).



Sale of Electric Utility Property to Coöperative Corporation Approved

AN application by the Missouri Electric Power Company and the Sho-Me Power Coöperative for orders authorizing the transfer of properties to the coöperative, issuance of securities, and authority to operate has been approved by the Missouri commission over objections by numerous parties, including municipalities and other utilities. The coöperative is to finance the enterprise by issuing 10,010 shares of capital stock, at \$5 a share, to members and by borrowing \$2,504,000 from the Federal government on a note secured by a mortgage bearing interest at 2.48 per cent and to be amortized in twenty-five years.

Attacks on the corporate power of the coöperative were overruled. The commission held, among other things, that a challenge of the corporate existence of the coöperative corporation can be reached only by a direct proceeding in

the courts. Corporate power is not properly an issue in determinations of this sort and if the commission grants a certificate it does not thereby adjudicate corporate power, enlarge the same, or confer any new powers.

The commission also held that approval should not be denied because the purchaser is a coöperative or because of unproven allegations that the property transfer is part of a scheme of socializing the electrical industry in the state of Missouri.

The commission concluded that it was not for it to determine the question of the right and power of the administrator of REA under the law to make the loan to the coöperative. It was said to be well secured and all of the coöperative's operative and financial plans, character and purpose of organization, and the nature, value, and extent of the property

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were all well known to the administrator when he approved the loan agreement.

Objections that the coöperative could later exclude itself from commission jurisdiction by conversion into a coöperative under the statute relating to service in rural areas were overruled. It was pointed out that this corporation was organized and obligated not only to serve its own members but also the public generally, and it could not escape regulation in this way.

The commission reiterated its ruling in other cases that it must determine whether or not the proposed transfer is detrimental to the public interest and whether or not the public will be put to any disadvantage. The commission had held that a property owner should be allowed to sell unless this would be detrimental to the public.

Sale of the property as a unit was considered preferable to delay to permit the sale of separated parts. It was said that there were advantages to the public (which is served in some 51 cities, towns, and communities) that the system remain as a unit to render a continuity and more economical service to all under one ownership and management. Since the seller was compelled to sell under orders of the Securities and Exchange Commission, it was also possible that unless the sale were approved the system would ultimately be dismembered and sold in parcels as far as possible, with not only a disturbance of the service and the economical advantages of a unity of operations, but the likelihood that service to some of the cities, towns, and communities might entirely cease.

The commission did not believe that its approval of the sale should be with-

held either on account of or to await the possibilities that as franchises in certain cities should expire the cities might establish and operate their own municipal plants.

An argument that speculators would profit by the transaction was met with the statement that this, if true, would be no reason to refuse approval. So long as securities are negotiable in a situation like this one there is no way to eliminate the speculator, and, as stated by the commission, "if it is not detrimental to the public interest for MEP to make this sale, it deserves an opportunity to do so whether or not speculation exists."

A charge of undercapitalization was based on the ground that 98 per cent of the capital structure would be long-term indebtedness, but the commission distinguished a coöperative of this sort from "profit-seeking public utilities." Moreover, it appeared that no more than 67 per cent of the value of the system was represented by long-term indebtedness, leaving at least 31 per cent of the value unabsorbed by stock issue or indebtedness.

Since the coöperative was to be accorded all the privileges of a public utility, the commission ruled that it must operate under the same regulations required of public utility organizations, including the obligation to maintain an adequate depreciation reserve. It had been argued that since the coöperative would pay monthly upon an amortization plan to reduce its long-term debt, this should displace the necessity of setting apart a depreciation reserve. The commission would not accede to this doctrine. *Re Missouri Electric Power Co. et al. (Case No. 10,297).*



Coöperative Association Cannot Object to Invasion of Territory

AUTHORITY was granted by the Colorado commission for an extension of electric service by the city of Lamar, which operates an electric system, over the objection of a rural electric coöpera-

tive furnishing service in part of the territory. The commission denied intervention by the association, stating that it did not claim to be a public utility and was not asking for a certificate.

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The association operates distribution lines and purchases its energy from the municipal plant. The commission said that if it were a public utility and were asking for a certificate of public convenience and necessity, the situation would be similar to that in *Hatmaker v. Public Service Commission* (1937) 127 Pa Super Ct 352, 20 PUR(NS) 147, 193 Atl 123.

There, the telephone company furnished service to a number of patrons without having secured a certificate. Hatmaker obtained a certificate authorizing service. He complained against the telephone company illegally furnishing service without a certificate. The telephone company appeared and admitted operating without a certificate and applied for one. Such certificate was granted.

The Pennsylvania court, in the Hatmaker Case, found that even though it would be advantageous to have the two small telephone service lines consoli-

dated, the commission could not compel consolidation. It also held that the commission could not deny the certificate and thus work the practical confiscation of the one by the other. In the instant case, however, the commission pointed out that the association was not in a position to object, as it did not claim to be a public utility and was not asking for a certificate. The commission continued:

While under the rule announced in *Public Utilities Commission v. Loveland*, 87 Colo 556, PUR 1931A 212, 289 Pac 1090, it is the duty of the commission and the courts to protect a public utility from competition by one invading its territory, that rule does not require us to deny a certificate to one seeking to serve as a public utility because the territory it proposes to serve, in part, may be served by a nonutility or because some residents of the territory may be serving themselves through an individually, or coöperatively, owned system.

Re City of Lamar (Application No. 5913, Decision No. 21392).



Authority to Abandon Natural Gas Service Denied

THE Federal Power Commission denied an application filed by the Cabot Gas Corporation for authority to discontinue natural gas service, pursuant to § 7(b) of the Natural Gas Act. The commission believed that the evidence did not warrant a finding that the available supply of gas was depleted to the extent that continuance of service was unwarranted or that the present or future public convenience and necessity permitted abandonment.

The applicant, a wholesale natural gas company, had been supplying the requirements of a distributing company under a contract, and it contended that this contract imposed an obligation to supply the requirements of the distributing company even though other consumers, dependent upon the same supply of gas, were thereby deprived of all service. The commission held this position to be untenable. In discussing a public utility's duty to serve the public whom it has undertaken to serve without preju-

dice or preference, the commission said:

A utility which has undertaken to serve the public may not select customers to be served in total disregard of the rights of other customers equally entitled to service. The applicants have an obligation to serve all customers dependent upon them for service without favor or discrimination, and the Producers Gas Company is entitled to its equitable share of the available supply and no more.

The obligation of the natural gas company to continue service already undertaken without preference was held to be greater than the corresponding obligation to serve all consumers in the general service area in which its operations were conducted. The commission said that it followed, therefore, that in determining the respective contractual rights of applicant's several customers, a natural gas company receiving gas under a storage agreement could not be considered a customer entitled to an equitable proration of the wholesale company's depleted supply. Accordingly, the commission stated

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that it was its view that the applicant should arrange to devote its production of natural gas to meet the demands of its

established customers. *Re Cabot Gas Corp. et al. (Docket Nos. G-460, G-461, Opinion No. 105).*



Judicial Notice of War Effects

THE Pennsylvania Superior Court, reversing an order authorizing an extension of motor carrier operations, ruled that the commission may not take judicial notice of inadequacy of existing facilities for the transportation of a specific commodity, and that this is particularly true of fuel oil and gasoline, which are the subject of rationing, de-

creasing the supply and the need of transportation to that extent.

The effect of a war emergency upon transportation of petroleum products must be established by proof and is not a proper subject for judicial notice. *Leaman Transportation Corp. et al. v. Public Utility Commission, 33 A(2d) 721.*



Other Important Rulings

A FEDERAL court held that the Interstate Commerce Commission may signify the highway over which carriers may operate as well as areas between terminal points. *Consolidated Freightways, Inc. v. United States, 136 F(2d) 921.*

The Pennsylvania commission held that it has exclusive jurisdiction over abolition of grade crossings, and where it has not ruled upon the abolition of such crossings, an ordinance providing for abolition is of no effect. *Re Pennsylvania Railroad Co. et al. (Application Docket Nos. 59825, 59826).*

Authority to substitute caretaker for agency service at a railroad station was authorized by the Wisconsin commission in view of a decrease in revenues, previous discontinuance of passenger service to the station, and removal of a spur track to cannery buildings in the area. *Re Thomson (2-R-1504).*

The Pennsylvania commission, in denying authority to increase intrastate motor carrier rates 10 per cent, stated that a general increase of 4 per cent would be

reasonable in that it would effect parity between intrastate and interstate rates and would furnish additional revenues needed to meet increased operating costs and guaranteed continued service during the war. Commissioner Buchanan dissented, stating that the order "invites a 4 per cent increase," which he disapproved. *Public Utility Commission v. Adams Transit Co. et al. (Complaint Docket No. 13904).*

The Louisiana commission held that the reasonableness of freight rates may not be tested by a comparison with rates established to meet water competition when the water-compelled rates are special and depressed rates which should not be extended beyond the sphere of the influences which brought them into being; and it also held that the fact that railroad freight rates are lower in one area than another does not constitute unlawful discrimination where the rates in one area were reduced to meet water competition which does not exist in the other area. *Higgins Aircraft, Inc. et al. v. Louisville & Nashville Railroad Co. et al. (Order No. 2975, No. 3824).*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports*.

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Q These reports are published annually in five bound volumes, with an *Annual Digest*. The volumes are \$6.00 each; the *Annual Digest* \$5.00. A year's subscription to PUBLIC UTILITIES FORTNIGHTLY, when taken in combination with a subscription to the Reports, is \$10.00.

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RE RATES FOR TRANSPORTATION OF SAND AND GRAVEL

OHIO PUBLIC UTILITIES COMMISSION

Re Rates for Transportation of Sand and Gravel

[Investigation and Suspension Docket No. 161.]

Rates, § 649 — Increase under Price Control Act — Notice to Federal agency.

1. A proposed increase in rates for the transportation of sand and gravel in intrastate commerce constitutes a "general increase" within the meaning of the Federal Price Control Act, requiring notice to the Office of Price Administration and consent to intervention in the rate proceeding, p. 131.

Rates, § 649 — Increase during wartime — Defect in notice to Federal agency — Intervention.

2. A proposed increase in rates for the intrastate transportation of sand and gravel is unlawful where the notice to the Office of Price Administration does not give that agency specific authority or consent for timely intervention by that agency in the rate proceeding, p. 131.

[September 2, 1943.]

I NVESTIGATION of *proposed increase in rates for transportation of sand and gravel; cancellation of rates ordered.*

By the COMMISSION: By schedules filed, on statutory notice, to become effective June 1, 1943, respondents proposed certain increases in their Ohio intrastate rates for the transportation of sand and gravel, carloads, in open-top cars, from various points of origin on the Pennsylvania Railroad to various points of destination on the lines of the Pennsylvania Railroad and its connections. Upon protests of the Office of Price Administration, Washington, D. C., and the Killbuck Sand and Gravel Company, the proposed schedules were suspended until September 28, 1943, unless otherwise ordered by the Commission. Hearing was had on July 7, 1943. Briefs have since been filed by the parties and the case thereupon submitted.

The schedules, herein under suspen-

sion, are published in supplements Nos. 72 and 74 to the Pennsylvania Railroad Company freight tariff, Ohio No. 512. On May 25, 1943, we received a telegram from Dewey C. Wayne, counsel for the Office of Price Administration, reading as follows:

"This office protests increased rates supplement 72 Ohio 512 issued by Pennsylvania Railroad effective June 1, 1943. Notice does not comply with statute October 2, 1942, because carrier failed to consent this Office intervention. Request suspension of increased rates."

On May 29, 1943, we received a letter from John H. Eisenhart, Jr., transportation counsel for the Office of Price Administration, dated May 27, 1943, reading as follows:

"Subject: Supplement No. 72 to

OHIO PUBLIC UTILITIES COMMISSION

Ohio 512 (Pennsylvania Railroad).

"On May 24, 1943, this office wired protest against rates published in the above schedule to become effective June 1, 1943, alleging that the notice served upon this office by the carrier did not comply with the amendment to the Emergency Price Control Act of October 2, 1942. The notice did not contain the consent of the carrier to the timely intervention of the Office of Price Administration and was, therefore, not in compliance with that statute. Attached hereto is a copy of the notice served upon this office. After investigation, it appears that the change contemplated will result in higher prices to the consumer in contravention of the Emergency Price Control Act and the Executive Order of the President of the United States issued April 8, 1943, and designated as Executive Order No. 9328. We respectfully request your Commission to suspend the operation of the schedule as it proposes to increase transportation freight rates."

On May 28, 1943, protest was filed on behalf of the Killbuck Sand and Gravel Company containing allegations similar to those stated in the protest filed by the Office of Price Administration and further requesting suspension of two rates published in supplement No. 74 to Pennsylvania Railroad freight tariff, Ohio No. 512, for transportation of the commodities involved from Brink Haven and Howard, Ohio, to Mansfield, Ohio.

Section 1 of the Stabilization Act, approved October 2, 1942 (Public Law 729-77th Congress) contains a proviso, reading as follows:

"That no common carrier or other public utility shall make any general

increase in its rates or charges which were in effect on September 15, 1942, unless it first gives thirty days' notice to the President, or such agency as he may designate, and consents to the timely intervention by such agency before the Federal, state, or municipal authority having jurisdiction to consider such increase."

On October 3, 1942, the President, by Executive Order 9250, promulgated regulations for the carrying into effect of the Stabilization Act of October 2, 1942, which, among other things, established the office of Director of Economic Stabilization as the agency to receive notice of any increase in the rates or charges of common carriers or other public utilities as provided in the aforesaid Act of October 2, 1942. On October 14, 1942, the Director of Economic Stabilization issued a directive designating the Office of Price Administration as his representative to receive notices of increases in common carrier or other public utility rates and charges, with authority to issue appropriate regulations for the receipt of such notices. The Office of Price Administration, in turn, issued Procedural Regulation No. 11, effective November 12, 1942, containing, among other things, provisions reading as follows:

"Thirty days before the effective date of a general increase in the rates or charges of any common carrier or other public utility, there shall be filed with the Transportation and Public Utilities Division of the Office of Price Administration, Washington, D. C., two copies of notice of such proposed increase. . . . Such notices shall be deemed to have been filed when received in the office of

RE RATES FOR TRANSPORTATION OF SAND AND GRAVEL

such division. If authority for the establishment of any such increase is required by any regulatory agency, notice shall be given on or before the time such authority is sought in order that the Price Administrator may have timely opportunity to intervene, but in no event shall such notice be given less than thirty days before such proposed increased rates or charges are to become effective. All notices shall state the name and address of the Federal, state, or municipal authority having jurisdiction over the rates or charges in question. *Each such notice shall contain a statement that the common carrier or other public utility consents to the timely intervention by the Price Administrator, on behalf of the Director of Economic Stabilization, before the Federal, state, or municipal authority having jurisdiction to consider such increase.*" (Italics supplied.)

The Office of Price Administration will be referred to hereinafter, at times, as "OPA."

[1, 2] Thirty days prior to the effective date of the proposed increased rates, G. P. Shaw, chief of tariff bureau of the Pennsylvania Railroad Company, filed a notice with OPA per copy as set forth in the appendix hereto. This notice will be referred to hereinafter, at times, merely as the "Notice." The first sentence of the Notice reads as follows:

"Pursuant to the Emergency Price Control Act of 1942, as amended; Executive Order No. 9250; Directive No. 1 of the Director of Economic Stabilization, and Procedural Regulation No. 11 of the Price Administration, we attach Supplement 72 to Ohio

512 issued to become effective June 1, 1943."

Because of this wording, the fact that OPA filed protest requesting suspension of the proposed increased rates and was represented at the hearing by counsel, the respondents contend that the Notice was sufficient to meet the lawful requirements and that OPA did actually intervene in the proceeding.

Counsel for OPA appeared at the hearing solely for the purpose of defending its contention that the Notice failed to meet the lawful requirements. We quote below, in part, from the brief filed by counsel for OPA:

"Protestants appeared at the hearing and took the position that the proposed rates would be unlawful, even if they became effective, because respondents failed to give proper notice of the proposed increases as required by § 1 of the Stabilization Act."

"In order to effectuate the control of rates in accordance with the Stabilization Act, Congress has required that common carriers give thirty days' notice to protestant of rate increases, and that they must consent to the timely intervention by protestant before the Federal, state, municipal authority having jurisdiction to such increase. Because the requirement is statutory, protestant has no power to waive its provisions."

"In this proceeding the delinquency of the railroad respondents has placed The Ohio Public Utilities Commission in an embarrassing spot. Unless carriers comply strictly with the notice requirements of the Stabilization Act, protestant's actions with respect

OHIO PUBLIC UTILITIES COMMISSION

to proposed increases of rates will be impeded. Respondents are requesting, therefore, that the Commission overlook requirements of that act which protestant regards as necessary to the proper administration of the duties of the Office of Price Administration. In asking that the Commission overlook the deficiencies with respect to its notice, respondents are asking that the Commission reach a decision which will be ineffectual, because rate increases are unlawful, regardless of the action of the Commission, if the carrier fails to comply with the requirements of the Stabilization Act. Protestant respectfully submits, therefore, that respondents' delinquency should not be allowed so to impose upon the dignity of the Commission, and that respondents should be required to show strict compliance with the Stabilization Act before their proposals are considered."

Respondents, on brief, contend that the proposed increased rates are not numerous enough to be considered as a general increase. We do not agree with this view. Upon examination of the tariff naming the proposed increased rates, we find that the number of the proposed increased rates is sufficient to bring them within the meaning of the term "general increase" as that term is used in the Stabilization Act and Procedural Regulation No. 11 of OPA.

Upon careful consideration of the record and being fully advised in the premises, we find that the notice, as set forth in the appendix hereto, does not give to the Office of Price Administration specific authority or consent for timely intervention and for that reason the proposed rates, herein un-

der suspension, are unlawful and should not be permitted to become effective at this time.

APPENDIX

The Pennsylvania Railroad Company

Philadelphia, Pa.,

April 28, 1943.

Desk T, File 171-AIA

Transportation and Public Utilities
Division

Office of Price Administration
Washington, D. C.

Pursuant to the Emergency Price Control Act of 1942, as amended; Executive Order No. 9250; Directive No. 1 of the Director of Economic Stabilization, and Procedural Regulation No. 11 of the Price Administration, we attach Supplement 72 to Ohio 512 issued to become effective June 1, 1943. The tariff to which this is a supplement is only filed with the Ohio State Commission account of containing only Ohio intrastate rates. By this supplement, we have canceled the rates from Randles, Holmesville, and Millersburg, Ohio, and in addition the rates from Station 20365 Shreve, 20380 Lakeville, and 20395 Perrysville, Ohio, are also to be canceled account of rates being obsolete, as the sand production from these points has long since been exhausted, therefore the cancellation is for the purpose of removing obsolete rates.

The rates from the other points are increases brought about by the increased mileage involved due to the abandonment of the Walhonding Branch, authorized by Certificate of Public Convenience and Necessity, I. C. C. Finance Docket 13940, Pennsylvania, Ohio & Detroit Railroad

RE RATES FOR TRANSPORTATION OF SAND AND GRAVEL

Company et al. Abandonment, March 6, 1943. Within Ohio the rates on building aggregates, including sand and gravel, for distances over 40 miles are maintained under order of the Interstate Commerce Commission, I.C.C. Docket 25020, Rates on Sand, Gravel and Crushed Stone in the state of Ohio, which requires the rates over 40 miles to be maintained on the PSM 923 Scale. The abandonment of this branch increases these mileages, thus requiring the rates named to be increased to be in compliance with the I. C. C. Docket above mentioned.

The supplement attached, as will be noted, involves adjustments for Ohio intrastate movement and we considered that inasmuch as this adjustment results in increases, that your office should be advised.

THE PENNSYLVANIA RAILROAD
COMPANY

By (Signed) G. P. Shaw
Chief of Tariff Bureau

AFFIDAVIT

State of Pennsylvania }
County of Philidelphia } ss:

G. P. Shaw, being duly sworn, deposes and says that he is Chief of Tariff Bureau, The Pennsylvania Railroad Company; that the foregoing is a true and correct copy of a notice certified by deponent under date of April 28, 1943, and served by mail on said date, upon the Transportation and Public Utilities Division of the Office of Price Administration, Washington, D. C.

(Signed) G. P. Shaw

Sworn and subscribed to before me
this 28th day of April, 1943.

(Signed) Ernest H. Brown

Commission expires 21 February,
1947.

UTAH PUBLIC SERVICE COMMISSION

Public Service Commission of Utah

v.

Utah Power & Light Company

[Case No. 2612.]

Valuation, § 40 — Rate base determination — Reproduction cost.

1. Any rule or formula which requires the fixing of utility rates entirely or in part on the reproduction cost new less depreciation value of properties should not be followed, p. 143.

Valuation, § 39 — Rate base determination — Reproduction cost — Combination of distintegrated systems.

2. The reproduction new theory of rate base determination is particularly inappropriate when applied to a power system which has resulted from the

UTAH PUBLIC SERVICE COMMISSION

combination and integration of many separate and independently constructed electric systems of varying sizes and types of property, in many cases the properties having been constructed to serve small sections of the area presently served and in several instances the facilities of the separate companies having paralleled and duplicated each other—not constructed as parts of a planned development or integrated system, p. 143.

Return, § 11 — Basis — Original cost or prudent investment.

3. The Commission may adopt, if it deems it fair and equitable, original cost or prudent investment as the rate base and reject all other formulas, p. 143.

Return, § 9 — Fair value basis.

4. There is no legislative requirement that the Commission base utility rates on fair value of the property, p. 143.

Valuation, § 409 — Exclusion of evidence — Reproduction cost.

5. Evidence of reproduction cost is properly excluded in a proceeding to determine a rate base when the Commission would feel compelled to disregard such evidence, if admitted, because of its essential fallaciousness, p. 143.

Valuation, § 49 — Rate base determination — Trended or translated investment.

6. The theory of establishing a rate base on evidence of the trended or translated investment in property, representing an adjustment of actual investment by the application of translation factors to reflect the present purchasing power of the invested dollars, is fundamentally unsound and should not be used as a guide to a fair return or capital requirements of a utility company, p. 146.

Valuation, § 68 — Original cost determination — Excess price to gain control — Earnings basis.

7. Any amount paid to gain control of an operating system, clearly identified as capitalized earnings, should not be included in the rate base; only the investment prudently made for the benefit of the public and the uses of the business should be included, p. 150.

Valuation, § 69.1 — Cost determination — Fees paid to affiliates — Intercompany profits.

8. Fees paid to affiliated companies which are merely incorporated construction departments of a parent company, representing profits to an affiliate, should be excluded from cost and from the rate base, p. 151.

Valuation, § 114 — Preferred stock expense.

9. An amount purporting to represent the cost of selling preferred stock should be excluded from cost of utility plant and from the rate base instead of being included as an "organization expense," p. 152.

Valuation, § 143 — Organization expense.

10. Estimated organization expense not supported by evidence and not representing actual cost of organization should not be added to the investment in property or intangibles, where allowance has been made for the cost of promotion and organization services, p. 153.

Valuation, § 98 — Accrued depreciation — Actual investment basis.

11. The use of any depreciation method to compute accrued depreciation upon a valuation base other than actual investment is meaningless, since by definition the purpose of all recognized depreciation methods is to accumulate

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a depreciation reserve which will equal the cost of the plant over its service life by means of an equitable apportionment of the annual charges, and, if computations are based on fluctuating valuations, no one can predict what amount will eventually be accumulated, p. 155.

Valuation, § 107 — Accrued depreciation — Deduction of reserve — Use of sinking-fund method.

12. It is fair and equitable not to deduct the accumulated reserve from plant cost when the sinking-fund method of depreciation is used because only the annuity portion of depreciation expense is included in operating expenses as a charge against the ratepayers, p. 155.

Depreciation, § 32 — Sinking-fund method — Interest rate.

13. The sinking-fund depreciation method is fair and equitable for rate-making purposes when the sinking-fund interest rate is the same as the rate of return, p. 155.

Valuation, § 102 — Accrued depreciation — Sinking-fund depreciation method — Undepreciated prudent investment rate base.

14. Use of the 6 per cent sinking-fund depreciation method with an undepreciated prudent investment rate base was approved because of its adaptability to rate making, where the return allowance was at 6 per cent, p. 155.

Valuation, § 307 — Working capital — Electric utility — Relation to expenses.

15. Working cash capital of an electric utility was based on forty-five days of current cash operating expenses, plus full allowance for prepaid amounts, where the average elapsed time between the rendering of service and collection of revenues was about thirty-five days, p. 157.

Valuation, § 296 — Cash working capital — Depreciation expense — Delayed payments.

16. Noncash items, such as depreciation expense and items which are not paid for until after the related revenues are collected, are not included in the current cash operating expenses, p. 157.

Valuation, § 294 — Working cash capital — Minimum bank balances.

17. No additional allowance in working cash capital was made for minimum bank balances where a company had on hand at all times large amounts representing tax accruals in effect collected from customers and not paid until more than a year after their accrual, p. 157.

Valuation, § 22 — Rate base determination — Actual investment — Price changes.

18. The only just and proper rate base of an electric utility was held to be the actual investment in the property without giving effect to changes in price levels, p. 158.

Valuation, § 67 — Actual investment — Plant acquisition adjustments.

19. The fact that an amount is classified in Account 100.5, Utility Plant Acquisition Adjustments, does not necessarily establish whether it is to be included in or excluded from a prudent investment rate base and from the depreciation base for rate-making purposes, p. 158.

Valuation, § 68 — Excess of system cost over original cost.

20. Excess of system cost over original cost, classified in Account 100.5, Utility Plant Acquisition Adjustments, representing an investment made in connection with the integration of several smaller utilities into the present company system, although considered doubtful, was included in the rate base, p. 158.

UTAH PUBLIC SERVICE COMMISSION

Return, § 47 — Reasonableness — Relation to rate base.

21. The problem of determining a fair rate of return is one that must be considered closely in connection with the fixing of a proper rate base, p. 159.

Return, § 26 — Reasonableness — Prevailing interest rates — Current refinancing.

22. Consideration of current interest levels in establishing the fair rate of return is especially appropriate when a company is presently engaged in a large refinancing program, p. 160.

Expenses, § 114 — Taxes — Abnormal war conditions — Income and excess profits taxes.

23. Allowance was made for all of a utility company's taxes, to permit the company to earn the full return allowed without any deduction for the portion of income and excess profits taxes associated with the nation's war effort, p. 160.

Return, § 87 — Electric utility.

24. A rate of return of 6 per cent on the rate base of an electric utility was held to be fair and liberal, p. 160.

Expenses, § 92 — Regulatory expense — Abnormal items — Amortization.

25. Expenditures pertaining to a rate case, reclassification of plant accounts, and the valuation of property, representing abnormal operating costs that will not occur in the future, need not be included in future operating costs but may be amortized over a 10-year period, p. 163.

Depreciation, § 41 — Sinking-fund method — Interest rate.

26. Depreciation expense of a company which is allowed a 6 per cent return should be computed by the 6 per cent sinking-fund depreciation method, p. 164.

Depreciation, § 14 — Basis — Original cost.

27. The proper depreciation base is the original cost of property and not a "fair value" depreciation base, p. 164.

Expenses, § 114 — Income taxes.

28. Allowance was made in operating expenses for present and future income taxes on the basis of the most recent Revenue Act and the taxable net income as reported to the Bureau of Internal Revenue, with the exception that the tax depreciation adjustment was computed at a lower rate in view of the questioning of the allowance by the Federal tax authorities, p. 157.

Expenses, § 114 — Excess profits taxes.

29. Computed excess profits taxes not reported or paid should not be included in the cost of utility service and thus passed on to the ratepayers, p. 167.

Rates, § 181.1 — Reasonableness — War period.

30. An immediate rate reduction should be ordered, when it is shown that an electric company is earning excess profits from war business, instead of postponing a rate reduction until "normal conditions" arrive, p. 170.

Valuation, § 90 — Accrued depreciation — Deduction — Use of sinking-fund method.

Statement that when the sinking-fund depreciation method is used for rate purposes no deduction for accrued depreciation is made if the sinking-fund interest rate is the same as the rate of return, p. 156.

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Depreciation, § 28 — Compound interest method — Sinking-fund method.

Description of the compound interest method and the sinking-fund method of computing depreciation, p. 156.

Valuation, § 107 — Accrued depreciation — Deduction — Use of compound interest method.

Statement that, in order to deal equitably with the company and the ratepayers, it is necessary to deduct the accumulated depreciation reserve when the compound interest depreciation method is used for rate making, p. 156.

(HACKING, Commissioner, dissents in part.)

[September 11, 1943.]

I NVESTIGATION, on complaint by Commission, of electric utility rates; rate reduction ordered.

APPEARANCES: Clinton D. Vernon and Warwick C. Lamoreaux, for the Public Service Commission of Utah; Paul H. Ray and Sidman I. Barber, for the Utah Power & Light Company.

By the COMMISSION: This proceeding was instituted by a complaint filed on behalf of the Public Service Commission of Utah alleging that the rates of the Utah Power & Light Company (hereinafter sometimes referred to as the company) are unjust and unreasonable, and that it is and has been earning in excess of a reasonable return on a just and proper rate base in rendering electric service in this state. The complaint ordered that an investigation and public hearing be had to determine a just and proper rate base and a fair and reasonable rate of return on such base, and to inquire into the justice and reasonableness of the company's rates.

The company, by its answer, denied that it has been earning more than a reasonable return or that its rates are unjust, unreasonable, or unlawful. Further, it alleged that it is entitled to earn a reasonable return upon the "value of the electric property" used and

useful in rendering electric service in the state of Utah. After due and legal notice hearings commenced in November, 1942, and were concluded in February, 1943. Two members of the Commission were in attendance on each of the thirty-six days of the hearings, and for most of the sessions all three members were present. The transcript in this proceeding numbers 3,629 pages and a total of 126 exhibits (not including revisions) were introduced, 78 by the Commission's staff and 48 by the company. At the close of the hearings the matters herein involved were submitted for decision upon the record and briefs to be filed. Main and reply briefs covering the points at issue have been filed and have been considered by the Commission.

Utah Power & Light Company, Its Subsidiaries and Affiliates

Utah Power & Light Company was one of three companies organized or caused to be organized by Electric Bond and Share Company in 1912 for the purpose of acquiring and developing electric properties in Utah and southeastern Idaho. The other two companies were Utah Securities Cor-

UTAH PUBLIC SERVICE COMMISSION

portation, a holding company which, until its dissolution in 1925, controlled Utah Power & Light Company through the ownership of all of its common stock, and Utah Power Company. The latter company was not an operating utility. Its principal function seems to have been to acquire operating electric properties and convey them to Utah Power & Light Company. It also contracted with another Electric Bond and Share subsidiary, Phoenix Construction Company, for construction work for and on behalf of Utah Power & Light Company. Except for an early brief period when it was directly controlled by Electric Bond and Share Company it was a wholly owned subsidiary of Utah Power & Light Company until dissolved in 1935. Utah Securities Corporation was succeeded in 1925 by Electric Power & Light Corporation and the common stock and control of Utah Power & Light then passed to that corporation. Utah Securities Corporation was, and Electric Power & Light Corporation now is, controlled by and operated as a subsidiary of Electric Bond and Share Company. Electric Power & Light Corporation owns all of the 3,000,000 shares of common stock and 2,100 shares of preferred stock of Utah Power & Light Company, representing approximately 93 per cent of the company's voting stock.

Through its affiliates (Electric Bond and Share Company, Utah Power Company, and Utah Securities Corporation) the company in the years 1912 to 1926 acquired the electric properties of 32 predecessor companies. In addition, in what have been called "arm's-length" transactions, the 50 PUR(NS)

company acquired the properties of 14 other utility companies operating in Utah and southeastern Idaho.

The company has controlled Utah Light and Traction Company (hereinafter sometimes referred to as Traction Company) ever since it acquired all of Traction Company capital stock in February, 1915, shortly after formation of that company. It owns all of the Traction Company's stock, consisting entirely of common stock, and since 1915 has been operating all of the electric properties of that company under a 99-year lease. Under this lease the company covenanted to pay an annual rental and unconditionally guaranteed the Traction Company's bonds, both as to principal and interest. Traction Company electric properties consist, principally, of four hydroelectric plants, one steam plant, distribution systems in Salt Lake City and Ogden, and connecting transmission lines.

Recently the company and the Traction Company applied to this Commission for its consent and approval of a plan whereby it is proposed to merge or consolidate the two companies. This is part of a larger plan to acquire, merge, or consolidate all properties of the company's two wholly owned subsidiaries, Traction Company, and The Western Colorado Power Company, which operates an electric system entirely in the state of Colorado. This Commission on July 17, 1943, 49 PUR (NS) 193, gave its consent and approval to a merger or consolidation upon certain terms and conditions. Previously the Colorado Commission had consented to the transfer of certificates of convenience and necessity from The Western Colorado Power Company to

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Utah Power & Light Company. Apparently, under Colorado law, it is unnecessary to obtain the consent or approval of that Commission to merge or consolidate the two companies.

The plan of consolidation or merger involves the obtaining of consents and approvals from the Federal Power Commission and the Securities and Exchange Commission, neither of which has as yet completed action on the application filed with it. The proposed consolidation or merger of Traction Company and The Western Colorado Power Company is part of Utah Power & Light Company's plan for refinancing \$44,000,000 of bonds which fall due in 1944, and which matter is also now pending before the Securities and Exchange Commission. If the companies are merged or consolidated, Utah Power & Light Company will cease to be a holding company under the Public Utility Holding Company Act of 1935. The company not only is a registered holding company, but is also a subsidiary of a registered holding company (Electric Power & Light Corporation).

The major portion of the electrical properties now operated by the company, exclusive of properties acquired from other companies, were constructed by Phoenix Construction Company and its successor, Phoenix Utility Company, both of which were wholly owned by Electric Bond and Share Company and which were in fact operated as the construction arm or department of that company. These Phoenix companies performed construction work for Utah Power & Light Company and other Electric Bond and Share Company affiliates throughout the country on a cost-plus basis. Fees

of 3 per cent and 4 per cent over and above all costs of construction which were paid by the Utah Power & Light Company constituted intercompany profits, and are discussed in a later portion of this report and order.

For many years the company operated under supervision and service contracts with the Electric Bond and Share Company. These contracts provided for two types of services to be rendered: (1) supervision and general services, and (2) special services. The contract enumerates the services of the first type as follows: "accounting; analyses; apparatus exchange; appraisals; budgets and forecasts; comptroller's; corporation; development programs; engineering; executive; factory information; financial; industrial development; insurance; merchandising and jobbing; new business; office investigations; operating; personnel; public relations; purchasing; rates; reports; secretarial; securities; sponsors; statistics; stock exchange listings and reports; tax services; traffic and treasury." Special services are listed in the contract as follows: "Sale and marketing of securities; engineering investigations, designs, appraisals, inspections, etc.; engineering for construction; construction; construction supervision; special investigations and reports upon new properties, projects or special problems, rate studies, etc.; accounting investigations, field audits, and system installations." For the first type of services the company paid certain percentages of total operating revenues. For special services the contract called for the payments of compensation based upon the amount of time devoted to the work by employees of Electric Bond and Share Company,

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plus certain amounts in addition to that cost, otherwise determined.

In 1935 Electric Bond and Share Company assigned its service contracts with operating utility companies to Ebasco Services, Inc., which was at that time formed by Electric Bond and Share Company to perform the services under those contracts. Ebasco Services, Inc., was, and still is, a wholly owned subsidiary of Electric Bond and Share Company. In 1934 Phoenix Engineering Corporation was organized to take over the construction work formerly performed by its two predecessor Phoenix companies. Phoenix Engineering Corporation was a subsidiary of Ebasco Services, Inc. In 1939 Ebasco Services, Inc., acquired all the business, property, and assets of Phoenix Engineering Corporation and all of its construction services were taken over. Since 1938 both Ebasco Services, Inc., and Phoenix Engineering Corporation have been required to render services to associated client companies on the basis of actual cost, pursuant to provisions of the Public Utility Holding Act of 1935.

Properties and Area Served

In this matter we are concerned only with the electric properties which are used and useful in the rendering of electric service in the state of Utah. The Western Colorado Power Company properties are not interconnected with the properties of Utah Power & Light Company or of Traction Company. Traction Company properties other than its electric properties are, of course, not included in our determination of the company's rate base in this case.

The interconnected system of the
50 PUR(NS)

Utah Power & Light Company serves southeastern Idaho, northern and central Utah, and a small part of southwestern Wyoming. Its largest hydroelectric plants are on the Bear river, four of which, Grace, Oneida, Soda, and Cove, are located in Idaho. The Cutler hydroelectric plant, which is part of the company's Bear River System is located in Utah. Also part of the Bear River System is the Lifton pumping plant located at the northern end of Bear lake, in Idaho, which is used to pump water from Bear lake into Bear river and thus equalize seasonal variations in the flow of Bear river. For the purposes of this case the Commission has accepted the company's separation or allocation of plant which it considers is used and useful in the rendering of electric service in the state of Utah. A small amount of property in Utah is considered to be used and useful in the rendition of service in Wyoming. On the basis of this separation 90.6 per cent of the total plant cost is allocated to Utah operations.

In addition to the foregoing plants and the four hydroelectric and one steam generating plants leased from the Traction Company, the company operates two steam plants, known as the Jordan and Orem plants, and a number of smaller hydroelectric plants on various streams or rivers. The company is interconnected with the Idaho Power Company and the Montana Power Company, both of which are affiliated companies, being part of the Electric Bond and Share system. Under contracts with these companies the Utah Power & Light Company purchases considerable amounts of energy. Through these and other interconnections the company is physical

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ly connected with transmission systems in Idaho, Montana, Washington, and Oregon.

Cases 248, 1431, and 1531

These are the principal rate cases involving the Utah Power & Light Company which have come before the Commission since it was created. Case 248, PUR1921C 294, was initiated by a petition which was filed by the company in 1919. The petition requested permission to raise the company's power rates. The theory of the company's application was primarily for "emergency relief." In its brief, filed in that case, it stated that its petition was not based upon the constitutional right of the utility to a reasonable return upon its investment, involving primarily questions of valuation to determine such investments." The company also took the position that "Whether or not such valuation be made by the Commission is by the statute made discretionary on its part." The company recognized (1) that its constitutional right is to a reasonable return based upon the *investment* in its properties, and (2) that under the provisions of the statute (Title 76 of the Utah Code Annotated, 1943), there is no *requirement* that the Commission adopt valuation methods in fixing just and reasonable rates. The Commission ordered certain increases in rates on the basis of a segregation of the investment in the Bear River System of the company. At the same time the Commission ordered the company to prepare a physical valuation of its properties, segregating physical values so as to reflect the "investment necessary to serve the various classes of consumers." Such a physical valuation of

the properties apparently was never completed or filed with the Commission.

In 1934 the Commission initiated a general investigation of the company's rates, Case 1531, and directed the company to make a valuation and appraisal of all assets used and useful in rendering service in Utah. This case was combined with an earlier one, Case 1431 (1937) 22 PUR(NS) 49, which was started by a complaint filed for and on behalf of the United States Government, War Department, U. S. Army, in which a 10 per cent reduction of rates for service at Fort Douglas was sought. During the progress of the proceedings the company revised the rate schedule under which service was rendered at Fort Douglas, effecting a saving in excess of the 10 per cent asked for, and Case 1431 was dismissed.

The valuation ordered by the Commission in 1934 was construed by the company to be a "reproduction cost new at present-day prices less accrued (observed) depreciation" valuation. Accordingly, the company submitted a valuation on that basis and on that basis alone. The evidence as to reproduction cost new less depreciation introduced in Case 1531 by the company indicated that the valuation of its Utah properties on that basis was \$73,045,647, as of December 31, 1934. The Commission, however, rejected this figure as a proper rate base and stated that it would not concede that a value arrived at by adherence to the reproduction cost method constituted a proper basis for fixing rates in that case or in any other case. The Commission also pointed out that it did not con-

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sider "value" and "rate base" to be synonymous.

The opinion and order in Case 1531 was signed by only two of the three Commissioners. The third member of the Commission, in a separate report, stated that in his opinion greater weight must be given to the original cost theory than to the reproduction cost theory. He also stated that to arrive at a value of the company's property on the basis of the evidence submitted as to reproduction cost the Commission would be required to base its decision "upon conjectural opinion and estimates."

The members of the Commission who decided Case 1531 took office just at the close of the hearing. After careful analysis of the record they gave consideration to the advisability of reopening the record to receive additional evidence "pertaining to various elements of value other than reproduction costs" from the Commission's staff in order to fix an equitable rate base. They concluded, however, to forego the matter of determining any rate base because the case had already cost so much money and consumed so much time. The Commission stated that, in its opinion, it would be better to give the ratepayers the benefit immediately of such reduced rates as it could then order. Had the Commission then had a complete case on original cost and prudent investment in the properties, as we now have in this case, we believe there would have been no occasion for giving consideration to the matter of reopening the record to receive additional evidence. The decision in Case 1531 was, in reality, the result of a

compromise agreement reached by the Commission and officials of the Utah Power & Light Company. The company agreed to file schedules effecting a reduction in its rates if the Commission would make a finding, on the basis of the evidence in the record, of the reproduction cost new less observed depreciation value of the property as of December 31, 1934. This the Commission did, but it clearly pointed out (1) that in its opinion observed depreciation did not represent the true depreciation (accrued depreciation) existing in the company's property; (2) that it rejected that "figure as a proper rate base"; and (3) that the rate changes which it then ordered were "not predicated upon this value."

It thus appears that during the entire history of the Utah Power & Light Company, since its organization in 1912, no Commission has ever found and approved a proper rate base to serve as a guide in determining the justness and reasonableness of the company's rates. In Case 248, *supra*, the company's rates were increased on the basis of a segregation of the company's investment in the Bear River System. In Case 1531 the Commission rejected reproduction cost new less observed depreciation as a proper rate base and found that the evidence which had been offered by the Commission's staff pertaining to other elements of value than reproduction cost was not sufficiently complete to permit the Commission to arrive at "an equitable rate base." The determination of a just and proper rate base for this company has been a paramount objective of the Commission in the investigation which has just been concluded.

*The Rate Base**Reproduction Cost Evidence Properly Excluded*

[1-5] The company offered to prove the reproduction cost new, less depreciation, of its property used and useful in serving Utah customers. Considerable testimony touching upon this matter was introduced by the company. After listening to such testimony for about a day and a half the Commission asked the company to state what additional witnesses it proposed to call in connection with the reproduction cost new less depreciation of its properties in Utah and, briefly, what their testimony would be. Counsel for the company prepared a statement as to what additional testimony it proposed to offer in this connection and read the same into the record. After considering the testimony which had been received and the statement of what additional reproduction cost evidence the company proposed to offer the Commission sustained an objection to the introduction of any further evidence on this subject and granted a motion to strike the evidence that had been read into the record. The objections made by counsel for the Commission to such evidence were that it is unreliable, fallacious, immaterial, irrelevant, incompetent, and of no probative value in such a case as this.

The evidence which was received but later stricken pertained principally to the methods followed in making a reproduction cost new, less depreciation, determination as of December 31, 1934. The preparation of that study consumed about three years of time and involved an expenditure of approximately \$350,000. It was com-

pleted in 1936 or 1937 and was introduced and considered by this Commission in Case 1531. Following the filing of the complaint in this case the company took the inventory of property as of the 1934 date, which inventory formed a part of that reproduction cost new study, adjusted it after analysis of certain records of the company to reflect additions and retirements occurring between December 31, 1934, and July 1, 1941, and then appraised or priced the property listed in the adjusted inventory. The record indicates that property listed in the adjusted inventory was appraised on the basis of prices obtained from manufacturers and suppliers which prices, in most instances, were submitted to the company for valuation purposes only, and that the cost of labor was determined for the most part by "repricing the labor used in the 1934 appraisal to reflect the prevailing labor costs in Utah and Idaho as of July 1, 1941." The company stated that undistributed construction costs and general overheads as used in the 1934 appraisal were, for the most part, used in the new appraisal but were revised to a certain extent to reflect conditions existing as of 1941. The company asserted and offered to prove that the reproduction cost new of property used and useful in serving Utah as of July 1, 1941, was at least \$106,500,000, and that the reproduction cost new, less depreciation, was at least \$91,000,000. According to the offer of proof the reproduction cost new of tangible properties was \$97,714,125 and the reproduction cost new, less depreciation, \$81,932,555. The company offered to prove that the accrued depreciation in the tangible property was \$15,781,570.

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The company argues that the doctrine of "fair value" is firmly embedded in the statutes and law of this state. They point specifically to § 76-4-21 of the Utah Code, Annotated, 1943, which, in part, provides:

"The Commission shall have power to ascertain the value of the property of every public utility in this state, and every fact which in its judgment may or does have any bearing on such value."

Under the "fair value" rule reproduction cost new less depreciation is frequently the controlling element and as the rule is interpreted by the company the Commission is legally bound to admit evidence of such a value and to give it consideration and weight in fixing reasonable rates. It is true that in some of the decisions of this Commission in years past the doctrine of "fair value" has been recognized and applied, and that in those decisions considerable reliance has been placed on the reproduction cost new less depreciation of the properties of the particular utilities for which the Commission was fixing rates. This has not been a uniform policy, however. For a number of years this Commission largely disregarded reproduction cost new and held broadly that the investment made and remaining in the property of the utility was the amount upon which the utility was entitled to earn a return. *Re Perry*, Case No. 702, 8 Utah PUC 70, PUR1925E 161, 175.

The doctrine of "fair value" is not embedded or in any way founded in the statutory law of this state. The supreme court of Utah has had occasion to observe that there is no "legislative requirement that the utility rates be based on the fair value of the property, 50 PUR(NS)

but only that they be fair and reasonable." *State ex rel. Public Service Commission v. Southern P. Co.* (1938) 95 Utah 84, 101, 24 PUR(NS) 305, 316, 79 P(2d) 25. In applying the doctrine of "fair value" in the past our predecessors have attempted to follow certain decisions of the Supreme Court of the United States—decisions which, in many instances have been misinterpreted and misapplied, and which, to the extent that they may be said to have required the basing of reasonable rates upon the reproduction cost new less depreciation value of utility property, we believe have been overruled by later decisions of the Supreme Court.

This report would be unduly extended if we should attempt to set forth in detail the reasons why we are convinced that any rule or formula which requires the fixing of utility rates entirely or in part on the reproduction cost new less depreciation value of properties should not be followed. We regard the evidence of reproduction cost offered in this case as being unreliable, fanciful, unrealistic, unfair, unscientific, and inherently fallacious. The reproduction cost study offered and received in Case 1531 was rejected by our immediate predecessors in office as a rate base for the Utah Power & Light Company. They stated that they would not "concede that the value arrived at by strict adherence to the reproduction method constitutes a proper basis for the fixing of rates in the instant case or in any case." *Public Utilities Commission v. Utah Power & Light Co.* (Utah 1937) 22 PUR(NS) 49, 57. We concur in what our immediate predecessors have said as to the unreliability of the reproduction

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new theory, and add that we believe it to be particularly inappropriate when applied to a property such as we have here. The present power system of this company is one which resulted from the combination and integration of 46 separate and independently constructed electric systems of varying sizes and types of property. In many cases the properties were constructed to serve small sections of the area presently served by the company, and in several instances the facilities of the separate companies paralleled and duplicated each other. They were constructed, for the most part, prior to the formation of this company in 1912, and the record establishes the fact that they were not constructed as parts of a planned development or integrated system. It seems illogical and unreasonable to attempt to fix just and proper rates upon a theory which assumes that these ancient properties would be reproduced under present day conditions and substantially as originally constructed.

In recent years members of the Supreme Court of the United States have clearly pointed out the inherent and fundamental defects of reproduction cost evidence. In concurring and dissenting opinions Justices Brandeis, Holmes, Cardozo, Stone (now Chief Justice), Black, Douglas, Murphy, and Frankfurter have forcefully pointed

out the reasons why such evidence is fallacious and unreliable, and why adherence to a rule that requires the giving of consideration and weight to such evidence actually is obstructive of the regulatory process.¹ We need not encumber this decision with a discussion of the legal and economic arguments that have toppled reproduction cost evidence from its once high pedestal in the process of fixing and determining reasonable and just utility rates. If Justices Black, Douglas, and Murphy correctly interpret the majority opinion in the Natural Gas Pipeline Company Case (cited in footnote), we are now "freed from the compulsion of admitting evidence on reproduction cost or of giving any weight to that element of 'fair value.'" We may now adopt, if we deem it fair and equitable, original cost or prudent investment as the rate base for this company and reject all other formulas. The majority opinion in that case, written by Mr. Chief Justice Stone, states:

"The Constitution does not bind rate-making bodies to the service of any single formula or combination of formulas. Agencies to whom this legislative power has been delegated are free, within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances."

¹Concurring opinion of Justices Black, Douglas, and Murphy in *Federal Power Commission v. Natural Gas Pipeline Co.* (1942) 315 US 575, 86 L ed 1037, 42 PUR(NS) 129, 62 S Ct 736; dissenting opinion of Justice Brandeis (in which Justice Holmes concurred) in *Missouri ex rel. Southwestern Bell Teleph. Co. v. Public Service Commission*, 262 US 276, 67 L ed 981, PUR1923C 193, 43 S Ct 544, 31 ALR 807; concurring opinions of Justice Brandeis and Justices Stone and Cardozo in *St. Joseph Stock Yards Co. v. United States* (1936) 298 US 38, 80 L ed

1033, 14 PUR(NS) 397, 56 S Ct 720; dissenting opinion of Justice Stone (in which Justices Brandeis and Cardozo joined) in *West v. Chesapeake & P. Teleph. Co.* (1935) 295 US 662, 79 L ed 1640, 8 PUR(NS) 433, 55 S Ct 894; dissenting opinion of Justice Black in *McCart v. Indianapolis Water Co.* (1938) 302 US 419, 82 L ed 336, 21 PUR(NS) 465, 58 S Ct 324; concurring opinion of Justices Frankfurter and Black in *Driscoll v. Edison Light & P. Co.* (1939) 307 US 104, 83 L ed 1134, 28 PUR(NS) 65, 59 S Ct 715.

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As noted, our state supreme court has said that there is no legislative requirement that we base utility rates on "fair value" of the property, and the Supreme Court of the United States has held that we are not bound to any single formula or combination of formulas and may, within the ambit of our statutory authority, make the pragmatic adjustments that may be necessary. We are clearly within the ambit of our statutory authority in rejecting at the outset evidence which, if admitted, we should feel compelled to disregard because of its essential fallaciousness. Other regulatory agencies have excluded reproduction cost evidence. The Federal Power Commission in three recent cases has excluded such evidence. *Re Chicago Dist. Electric Generating Corp.* (1941) FPC Op. 63, 39 PUR(NS) 263; *Detroit v. Panhandle Eastern Pipe Line Co.* (1942) FPC Op. 80, 45 PUR(NS) 203; and *Re Cities Service Gas Co.* (1943) FPC Op. No. 95, 50 PUR(NS) 65. The Civil Aeronautics Board in an opinion handed down November 12, 1942, in *Re American Airlines*, Order No. 2026, flatly rejected the "fair value" rule and stated that it regarded reproduction cost evidence as "irrelevant and immaterial to the issue of a fair and reasonable rate." The board served notice that evidence of this type will not in the future "be admitted to the record in rate proceedings for the purpose of showing the value of the carrier's property."

Trended or Translated Investment

[6] The company presented an engineer who testified as to the trended or translated investment in property devoted to the rendition of service in 50 PUR(NS)

Utah. He testified that when the actual investment, \$66,908,440 (according to figures supplied him by the company) is adjusted, by the application of translation factors, to reflect the purchasing power of the invested dollars as of July 1, 1942, the resulting figure is \$95,859,394. Accrued depreciation applicable to this trended or translated investment was estimated by another witness to be \$15,774,800. Deducting estimated accrued depreciation, so determined, from the trended or translated "property cost" produces the figure of \$80,084,594.

The witness outlined the procedure which he followed in trending or translating the amount invested by the company. From schedules of property purchases or acquisitions and summaries of annual gross additions and retirements he classified the property into main functional groups, and separated the invested dollars between labor, both skilled and unskilled, materials, and equipment. He then adopted wage rates and obtained price data for claimed representative and predominant materials and equipment from various sources, and developed translation factors based on yearly variations in materials and labor costs, which, when applied to the amounts of invested dollars translated those invested dollars to reflect the purchasing power of the dollar as of July 1, 1942.

The company asserts that its purpose in introducing such testimony is to help the Commission in arriving at a just conclusion as to the "fair value" of the property used and useful in serving Utah customers. This evidence, counsel for the company tells us, is not represented to be anything else than an approximation of the value of invested

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dollars as of July 1, 1942, but that it is an "approximation which is sound in its general principle and so strongly supported by common knowledge that it cannot be disregarded." Counsel for the company acknowledges that numerous difficulties preclude specific findings on the basis of this evidence, which rests primarily upon the judgment of the author and states that the results of the translation reflect the author's experience in making estimates, checked by subsequent cost analyses, and his knowledge of the major components and of the indexes which should be employed to attain a reasonable approximation.

The witness almost completely disregarded data made available to him reflecting the experience of the company, and chose to translate the invested dollars of the Utah Company on the basis of the experience actual or estimated, of another company, Carolina Power & Light Company. He pushed aside information in the files of the Utah Company for data contained in a reproduction cost study of the Carolina Company. From this reproduction cost study, which had been prepared by an Ebasco Services, Inc., engineer, he determined, for instance, how labor connected with construction projects of the Utah Company should be divided between skilled and unskilled classifications. He tried to justify the use of Carolina Company reproduction cost data on the ground that the two companies are so much alike as to be comparable for cost analysis purposes. The Commission's staff developed several significant points of dissimilarity and we find it impossible to indulge in the assumptions, so necessary to accord any

weight to the testimony of this witness, that the properties of Carolina and Utah companies are similar or comparable, that the material components of the two properties bear the same relationship to each other, and that the labor costs and construction experience of the companies have been for all practical purposes the same.

It is well known that labor and material prices have varied considerably during the past thirty years. A far more important and significant fact is that labor and material is more efficient and effective today than ever in the past. What weight should be given to a study which purports to reflect the change in the purchasing power of the utility construction dollar but which gives no consideration to such facts that today's dollar will construct a plant which produces a kilowatt hour of energy from one pound of coal instead of three pounds of coal? All that this theory indicates is that the older the plant is the more its value has appreciated, which is in conflict with the known facts regarding obsolescence and changes in the art of the industry. We believe that the theory adopted by this witness is fundamentally unsound. It should not be used as a guide to a fair return² or capital requirements of the company because investments are not made on such a wholly impractical basis. The investment in utility bonds and preferred stocks is made on the basis of a fixed return and the return on utility common stock is considered in connection with the fair rate of return. It is idle to argue that the obligations of the ratepayers to the company should be

² Fair return is found by applying the fair rate of return to the proper rate base.

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based on the fluctuating value of the dollar when the company has no such obligation to its investors. In this case, it appears, only the common stockholder, who has made no investment, would benefit from the use of the claimed inflation in value of the construction dollar.

We find and conclude that the determinations of this witness are based on so many improper assumptions and estimates and on so much speculation and conjecture, and are so far removed from the experience of the company that we would not be justified in relying upon his testimony or exhibit in arriving at a just and proper rate base for this company.

\$72,000,000 "Present Value" Rate Base

The company's president testified that in his opinion the "present value" of the property used and useful for rendering service in Utah is not less than \$72,000,000. In arriving at this figure, he stated that he had taken into account (1) system cost undepreciated, (\$66,908,440), (2) reconstruction cost, depreciated (\$81,932,555), and (3) the translated value of the invested dollars, depreciated (\$80,084,594). In some manner, which he did not disclose, he struck what he considered to be a "reasonable figure within the range of these three determinations."

We have searched the record in vain for enlightenment as to what this figure of \$72,000,000 includes and as to how it was arrived at. It is an over-all estimate, and has not been broken down into its component parts. We cannot ascertain what dollar amounts this witness assigned to value for "serviceability to the people," to value

as an operating "live" organization, to intangible or tangible property. Such elusive figures do not assist us in the determination of a just and proper rate base. The witness could not tell the Commission what weight he gave to reproduction cost new less depreciation, which was excluded before he testified, or what weight he gave to the translated value of the investment, a figure which we now reject as being at least as unreliable and fallacious as the determination of reproduction cost new less depreciation. And, while the witness could not advise the Commission what weight he gave to system cost or investment cost, we know, from the record that the amount of \$66,908,440 includes such items as awards to Electric Bond & Share Company for promotion services, expenses and "finders' fees" for selling preferred stock, Phoenix fees, representing inter-company profits and the improper write-up of property leased from Traction Company. We believe that the figure of \$72,000,000 is a calculated and predetermined amount which, if recognized as a "fair value" rate base by the Commission, will validate the watered common stock issued by the company to its parent holding company. The registration statements and plan for refinancing presented to the Securities and Exchange Commission propose that the bonded indebtedness of the company be refunded without change in the voting securities and the consolidated balance sheet presented in connection therewith contains \$40,000,000 of write-up in plant accounts in order to offset the \$30,000,000 of common stock. It is plain to the Commission that the valuation of \$72,000,000 for property used and useful in

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Utah is an arbitrary and unsupported calculation to which we can give but little consideration.

Original Cost

Utah Power & Light Company on July 12, 1940, filed with this Commission and the Federal Power Commission its reclassification and original cost studies pursuant to Utility Plant Instruction 2-D of the Commission's Uniform System of Accounts.

The staffs of this Commission and the Federal Power Commission undertook a joint investigation of the company's reports, books, and records and submitted a joint report to the Commissions. As a result of the studies, reports and conferences the original cost³ has been agreed upon in all principal amounts, the write-ups recorded in the plant accounts on the company's books have been classified in Account 107 and the excess of the system cost⁴ over original cost has been classified in Account 100.5. The company presented a statement entitled "Investment Cost of Electric Properties Used and Useful in Serving Customers in the State of Utah—Net Property Owned and Leased—Summary of Original Investment Cost."

With these data before us we shall proceed to make our determination of the original cost and system cost of utility plant used and useful to supply Utah customers.

Investment Cost of \$66,908,440

Claimed by the Company

The company, through its treasurer,

Mr. R. H. Jones, claimed that the total system cost of its owned and leased properties used and useful for Utah customers is the amount of \$66,908,440. Mr. Jones testified that the basic figures in the investment figures prepared by the staff and the company were obtained from the same source, the books and records of Utah Power & Light Company and Utah Light and Traction Company. The company's separation of the total plant to show the portion used to supply Utah customers has been accepted by the staff for the purpose of this case and results in 90.6 per cent of the total cost of plant being assigned to Utah. Also it is agreed that the electric properties owned by Traction Company but leased and operated by the company shall be included in the rate base of the company.

The company presented a reconciliation of the difference of approximately \$4,000,000 between the company and the staff. The items comprising the excess claimed by the company are described as follows by Mr. Jones:

Item 1. Utah Light and Traction Company cost of properties leased as shown in Commission Exhibit I compared with amount shown in Company Exhibit 14—difference approximately	\$1,800,000
Item 2. Phoenix fees represented by expenditures on books of Utah Power & Light Company assignable to Utah operations	997,472
Item 3. Cost of selling securities for the entire company, a portion of which is assignable to Utah	1,075,419
Item 4. Organization expense	350,000
Item 5. Deduct construction work in Progress not used in Company Exhibit No. 14	174,831
	<hr/>
	\$4,048,060

³ Original cost, as applied to utility plant, means the cost of such property to the person first devoting it to public service.

⁴ System cost means cost to the company of property acquired or cost to the first company

in the Electric Bond and Share System in the case of properties acquired by an associate company and conveyed to Utah Power & Light Company.

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These items represent the amounts in issue with respect to the claims of the company and the staff as to system cost of properties used for Utah operations, and we shall proceed with our determination of their due merit and weight.

Claimed System Cost of Leased Property

[7] The original cost of the properties leased from Utah Light and Traction Company has been determined from studies and reports prepared by the company and was accepted by the staff for the purpose of this case. Thus, there is no dispute as to the original cost of Traction Company electric properties leased to the company, which was \$12,153,296 as of December 31, 1942.⁵

Although the cost of the property to Traction Company has been tentatively agreed upon, the company has urged us to assume that Utah Power & Light Company had purchased all of the properties in 1914, including electric, gas, railway, and miscellaneous assets. Based on this assumption it computed a theoretical system cost for all properties in the amount of \$16,260,905.34. This amount was arrived at by deducting the net sundry assets of Traction Company in the amount of \$239,310.05 from the funded debt of \$15,476,000.00 and adding the amount of \$1,024,215.39 for cost of common stock. We note that plant accounts, the reserve for depreciation and surplus were not considered in the computation.

⁵ The Traction Company original cost report shows \$7,377,750.77 as cost of electric property acquired from predecessors, \$375,000 relating to Granite hydro plant and the balance represents net additions since 1914.

⁶ We consider that property cost allowed by

The next step in the company's computation was to allocate the computed purchase price to electric, gas, railway and steam heating properties. The amount of \$9,200,000 was allocated to electric properties as compared with the original cost to Traction Company of \$7,377,750.77 (both figures are exclusive of \$375,000 relating to the Granite hydro plant).

The allocated excess in the amount of \$1,800,000 is based on the statement of the company that it was essential to the plans of Electric Bond and Share Company, above everything else, to control the electrical properties serving Salt Lake City and Ogden. It is stated by the company that it had no interest in the railway and gas business and placed a much higher value upon the electric properties than all other properties combined. Therefore the allocation was based on departmental earnings, and on that basis 58.9 per cent of the over-all amount was assigned to electric properties, which resulted in applying all of the excess of computed purchase price over original cost to the electric properties.

It is difficult to comprehend the company's proposal for the whole matter is rooted in a series of assumptions, some of which are very tenuous, which lead up to its claim that \$1,800,000 should be classified in Account 100.5 on the books of the Utah Power & Light Company as representing the excess of system cost over original cost to Traction Company.⁶ We find it particularly hard to follow the com-

the Bureau of Internal Revenue for depreciation purposes would be much more reliable evidence of the cost of the property, but the company was unable or unwilling to disclose why no cost whatever is allowed for property acquired from predecessors.

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pany's arguments in this regard in view of the fact that it was able to determine the amount of the actual investment in these properties by the Traction Company.

The company has applied for approval and consent of this Commission to acquire the properties of Traction Company by merger whereupon the common stock of Traction Company will be canceled and the company dissolved. In our report on that case we arrived at the following conclusion regarding this matter of assumed system cost to Utah Power & Light Company:

"We must conclude that there is no excess of system cost over the original cost of Traction Company to Utah Company. This finding and conclusion is based on the sound viewpoint that an amount properly classified as write-up (Account 107) on the books of a wholly owned constituent company cannot be converted to system cost (Account 100.5) on the books of the surviving parent company." (49 PUR (NS) at p. 209.)

While the company devoted considerable effort in its testimony and briefs to explain the assumptions and computations with respect to the \$1,800,000 no explanation was offered as to why such an amount should be included in the rate base. Here is an amount which the company claims was paid by the Electric Bond and Share system to gain control of an operating utility. It represents an allocation based on and supported by earning power of the electric business. By what process of reasoning can it be asserted that the ratepayers should be charged with return and depreciation on such an excess which represents capitalized earnings? Why should any ratepayer be

penalized simply because a holding company desired "more than anything else," to gain control of an established, operating utility system? We are firmly convinced that any amount paid to gain control of an operating system, clearly identified as capitalized earnings, should not be included in the rate base. We are of the opinion that if such amounts (even if paid, which this was not) were made a part of the rate base, it would create opportunity for great mischief in the industry, stimulate avoidance of rate regulation and result in grave injustice to ratepayers. The amounts appearing in Account 100.5 should be analyzed to determine that they represent investment prudently made for the benefit of the public and the uses of the business. Unless such investment is made in the public interest it should not be included in the rate base.

We find that the proper amount to be included in the rate base for the leased properties is the cost of the electric properties as of December 31, 1942, in the amount of \$12,153,296. It makes no difference in the determination of the rate base whether the leased electric properties continue to be owned by the Traction Company or are later acquired by its parent, Utah Power & Light Company. In the event they are acquired the cost of the properties will be exactly the same, plus the net additions, because we will not permit transfers among affiliates to result in an intercompany profit.

Phoenix Fees

[8] The company claims that an amount of \$997,472.27, representing an allocation to Utah property of Phoenix fee should be included in the cost of plant. The company agreed

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that the successive Phoenix companies were, in effect, merely incorporated construction departments of Electric Bond and Share Company. Construction work was carried on in the name of the Phoenix Company, which operated without funds of its own, and as the work progressed expenditures were billed to the company. In addition to the money actually spent a fee, averaging about 3½ per cent of the cost, was collected from the company and recorded on the books as "construction company profit." The company does not deny that the Phoenix fee is an intercompany profit and has posed this question for our determination: should cost include amounts representing profits to an affiliate? Our answer is that such amounts must be excluded from cost and from the rate base.

The fifth circuit court of appeals, in a decision concerning the same type of intercompany profit, namely the construction fee paid to an affiliate, has said:

"Legitimate cost includes everything spent that would have been rightly spent if there had been but one corporation, but not profits charged by one wholly owned corporation against another." *Alabama Power Co. v. Federal Power Commission* (1943) 134 F(2d) 602, 47 PUR(NS) 257, 265.

In Case No. 2652 (1943) 49 PUR(NS) 193, 208, we considered the fee collected by Phoenix and found that it did not represent actual cost for the following reason:

"In the determination of the amounts to be included in Account 107 we have consistently eliminated the intercompany profits and write-ups which have been inscribed in the plant

accounts of Utah Company at Electric Bond and Share's direction through the use of dummy intermediaries, paper corporations, and the shuffling of properties, securities, and cash among the associated companies. We must continue to maintain that in considering transactions among the associated companies in the Electric Bond and Share group that we must look beyond the veil of corporate fiction in order to ascertain actual cost. The Phoenix fee admittedly is an intercompany profit, paid to a paper corporation set up by Electric Bond and Share Company. We find that the fee paid to Phoenix does not represent actual plant cost and that it is properly classified in Account 107."

We will not include in the rate base an intercompany profit, collected by a paper corporation formed merely to act as a billing device to extract fees from associated companies.

Preferred Stock Expense

[9] The company claims that an amount of \$1,075,419 purporting to represent the cost of selling preferred stock should be included in plant accounts and the rate base as "organization expense." It is composed of the following items:

Cost of selling preferred stock ..	\$187,145.98
5% discount on preferred stock sales to employees	41,020.00
"Finder's fees" paid at the rate of \$7, \$9, and \$10 per share to Utah Securities Corporation by the company for "finding" its parent Electric Bond and Share Company as the purchaser of its 7% preferred stock	791,000.00
Commissions paid to Electric Bond and Share Company by the company in connection with the sale of its 7% preferred stock	56,252.75
	\$1,075,418.73

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The proper classification of preferred stock expense was considered by the National Association of Railroad and Utility Commissioners in connection with the adoption of the present Uniform System of Accounts. In a report to the annual convention the proper treatment was stated as follows:

"Commissions and expenses on the issuance and sale of preferred stock do not give rise to property and should not be included in the utility plant accounts of the utility. Such items represent a cost of money and should be recovered by the utility out of the return earned on its property. There is essentially no difference between commissions and expenses on capital stock issues and discount and expense on bond issues. Both represent a cost of money to the utility. The amortization of bond discount and expense has been rightfully considered a part of the interest cost of the issue and as such has been considered recoverable out of the return earned on the property. Commissions and expenses on capital stock should be considered in the same manner."⁷

Referring to this item of \$1,075,418 in our decision in Case No. 2652, *supra*, 49 PUR(NS) at p. 208, we stated:

"Utah Company claims this amount was properly includable in plant accounts as organization expense under the former system of accounts and is now eliminated by a shift in accounting classification. We cannot agree with the company's contention. The expenditures were made years after

Utah Company was organized and in successful operation, therefore, are not associated with the organization of the company; certainly, by the very description of the item, it does not represent plant assets. Furthermore, Utah Company so far has been unable to produce any evidence that the 'finder's fees' were not intercompany profit to Electric Bond and Share. We accordingly find that the entire amount is improperly classified as organization expense and may be temporarily classified in Account 151, Capital Stock Expense, or Account 107, Utility Plant Adjustments, pending further study by Utah Company for the purpose of ascertaining to what extent these amounts represent actual cost."

We consider that the item is wholly inappropriate and improper in any rate base and have excluded it from cost of plant and from the rate base.

Estimated Organization Expense

[10] The company carries on its books an amount of \$416,001.68 as a charge made by Electric Bond and Share Company for organization expenses. The staff recommended that approximately \$47,000 be included in plant accounts and that the remainder, representing an "award" to Electric Bond and Share Company for "promotion services" in the amount of \$310,000, and certain legal and printing expenses in connection with the issuance of bonds be excluded from cost of plant.

The company has admitted that it cannot support the item as a charge to organization expense or property accounts. However, the company in its brief claims that we should add

⁷ Proceedings of the Forty-Eighth Annual Convention—1936.

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\$350,000 to organization as a fair and reasonable estimate. It is stated in the company's brief that the amount of \$595.75, allegedly the only amount allowed, is not even a token recognition of the cost of organization.

The company, in its brief, is in error wherein it states that the staff has allowed only \$595.75 for organization expense. The record is clear that \$47,000 has been included in plant accounts for the cost of promotion and organization services. The contention that the estimated amount of \$350,000 should be allowed appears to be an attempt to justify an amount appearing on the company's books which is an improper write-up and not cost of organization. We stated in Case No. 2652, *supra*, p. 208, that:

"Utah Company also claims that an estimated amount of \$350,000 should be added to plant accounts for organization expense. The plant accounts include an amount of \$1,176 in organization account and \$45,900 for organization and promotion fees in Account 100.5 Electric Plant Acquisition Adjustments. Since this amount of \$47,000 is all of the organization expense actually incurred, we need not add any estimates of this nature."

The Commission finds that the company's estimate is not supported by the evidence, does not represent actual cost of organization, and should not be added to the investment in property or intangibles.

Original Cost Recommended by Staff

The staff found the total cost of electric property by adding the cost of property constructed to the cost of property purchased and making the necessary deductions for retirements. It made a detailed examination of the company's books and records and set forth the various items and amounts which were improperly recorded therein, with testimony as to the reasons why such items are considered improper. The improper write-ups have been removed from plant accounts and classified in Account 107 in the staff's exhibits.

As heretofore indicated the company has conceded all adjustments proposed by the staff with the exception of the four items we have previously discussed and found do not represent actual cost or investment. We may now turn to the staff's classification of the total plant to determine original cost and system cost.

The total investment in owned properties devoted to electric service in Utah amounts to \$51,134,480 as of December 31, 1942. Of that amount \$338,274 is construction work in progress, \$2,154,687 is the excess of system cost over original cost, and \$48,641,519 is the original cost.

The total investment in leased properties of Traction Company is not more than \$12,153,296 as of December 31, 1942, and there is no excess of system cost over the investment made by Traction Company.

These data may be summarized as follows:

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Owned Plant:			
Original cost	Dec. 31, 1941	Net Additions	Dec. 31, 1942
Excess of system cost over original cost (Account 100.5)	\$48,362,555	\$278,964	\$48,641,519
	2,154,687	2,154,687
Total Owned Plant	50,517,242	278,964	50,796,206
Leased Plant	12,153,012	284	12,153,296
Total investment in plant devoted to Utah service	\$62,670,254	\$279,248	\$62,949,502

The amount of \$62,949,502 represents the total actual investment made by Electric Bond and Share Company and its associated companies to establish the property as an assembled integrated electric system in successful operation. It includes all components of construction cost such as labor, materials and overheads, and the total cost of purchased properties. As heretofore stated, we have eliminated the intercompany profits and write-ups which have been inscribed in the plant accounts, at Electric Bond and Share's direction, through the use of dummy intermediaries, paper corporations, and shuffling of properties, securities, and cash among the associated companies, in order to arrive at cost to the first company in the Bond and Share group which is the only proper cost to Utah Power & Light Company.

Accrued Depreciation

[11-14] The company presented exhibits which set forth four different amounts representing the accrued depreciation existing in its property and computed on the basis of four valuations as follows:⁸ the estimated accrued depreciation assigned to property in terms of the purchasing power of the utility construction dollar at July 1, 1942, amounted to \$15,774,800; the estimated accrued depreciation assigned to reproduction cost

new as of July 1, 1941, amounted to \$15,778,305; the estimated accrued depreciation assigned to "fair value undepreciated" as of December 31, 1941, amounted to \$10,383,000; and the estimated accrued depreciation assigned to original cost averaged for 1942 (including excess of system cost over original cost) amounted to \$8,225,207.⁹ Each of the above-mentioned amounts has been computed from data contained in the company's "Plan for Depreciation Accounting" using the services lives and the 6 per cent compound-interest depreciation method. The difference in the above amounts is due to the difference in the valuation of the property and very slightly to the difference in dates, but no part of the difference is attributable to any differences in the service life estimates, depreciation rates or depreciation method. However, the use of any depreciation method to compute accrued depreciation upon a valuation base other than actual investment is meaningless. By definition the purpose of all recognized depreciation methods is to accumulate a depreciation reserve which will equal the cost of the plant over its service life, by means of an equitable apportionment of the annual charges. If computations are based on fluctuating valuation assigned to reproduction cost

⁸ The various valuations relate to property used and useful to supply Utah customers.

⁹ Refers to the cost of depreciable property recommended by the Commission staff.

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tions no one can predict what amount will eventually be accumulated, whether too much or too little, and in either event the fundamental purpose of the depreciation method is nullified. We conclude that there is absolutely no significance or validity attached to any computation of accrued depreciation based on any of the so-called valuations of utility plant other than the actual investment in depreciable property.

The Commission's staff did not present evidence as to the required depreciation reserve because it advocated the use of the sinking-fund depreciation method for rate case purposes. Under this method no deduction for accrued depreciation is made when the sinking-fund interest rate is the same as the rate of return. If the depreciation rates, depreciable property base, and interest rates are the same the compound interest depreciation method and the sinking-fund depreciation method produce equivalent results for rate-making purposes. This fact is amply demonstrated by the record and is not disputed.

The Commission, by its order dated March 1, 1941, approved the service lives and the compound-interest depreciation method proposed by the company. It found that the depreciation reserve on the company's books was inadequate as of December 31, 1940, and stated that "it should be noted here that the original cost of depreciable properties as finally determined by the Commission will be the basis upon which depreciation accruals shall be computed."

Either the compound interest or sinking-fund depreciation method may be used in rate making. The distinc-

tion between the two methods is in the manner of application in a rate case where depreciation and return are being determined. The depreciation methods and the proper application of each is found to be as follows:

The compound interest method is the plan for apportioning depreciation whereby the annual depreciation charges are so computed that an equal annuity charge plus interest on the accumulated amounts will equal the *cost of the plant over its service life*. Under the compound interest method both the annuity charges and the interest on the accumulated amounts are charged to depreciation expense.

The sinking-fund method is the same as the compound interest method except that under the sinking-fund method only the annuity charge is included in depreciation expense. The annual interest on the accumulated reserve is treated as a reservation of net income. An undepreciated rate base is used in connection with the sinking-fund method in rate making.

In order to deal equitably with the company and the ratepayers it is necessary to deduct the accumulated depreciation reserve when the compound interest depreciation method is used for rate making. When the sinking-fund method is used the accumulated reserve is not deducted from plant cost and gross investment is used as the rate base. This is fair and equitable because only the annuity portion of depreciation expense is included in operating expenses as a charge against the ratepayers. The fact that the sinking-fund method is used in connection with an undepreciated rate base compensates for considering the annuity charge only as depreciation ex-

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pense. The interest charge is included in depreciation expense under the compound interest method and the depreciation reserve is deducted from the gross investment. The interest charge is not included in depreciation expense under the sinking-fund method but is included in the return because the depreciation reserve is not deducted from the gross investment rate base to which the rate of return is applied. It is a mathematical fact that when the interest rate is the same as the rate of return either of the above-described depreciation methods may be used in the manner described and will produce both fair and equivalent results.

The Commission finds that for rate-making purposes the sinking-fund depreciation method is fair and equitable when the sinking-fund interest rate is the same as the rate of return. It is true, of course, that we would arrive at the same result by using either the 6 per cent compound interest method advocated by the company or the 6 per cent sinking-fund method advocated by the staff since we have decided to allow a 6 per cent rate of return. We have decided to use the 6 per cent sinking-fund depreciation method with an undepreciated prudent investment rate base because of its adaptability to rate making. For example, it requires no determination or deduction for accrued depreciation which avoids any possible controversy in that respect and if allocations are made, separate determinations of the accrued depreciation in the functional classes of plant are avoided. It might be noted that the undepreciated prudent investment rate base is more nearly comparable

to the company's "present condition fair value" rate base because the witness, in arriving at his judgment figure, considered only the condition of the property and not how much service life had expired.

Working Capital

[15-17] The required working capital consists of the materials and supplies needed in the business and a supply of cash to pay current operating expenses. The average materials and cash required represents investment which is tied up in the business and which is properly included in the rate base upon which the company is entitled to earn a fair rate of return.

The average amount of materials and supplies used in electric operations is readily determined from the company's records and averaged \$743,750 during the year 1941. Cash is needed to meet current expenses between the time of rendering service and the collection of revenues. The average elapsed time is about thirty-five days but we have used forty-five days of current cash operating expenses, plus full allowance for prepaid amounts, to provide an ample and liberal working capital allowance. The amount of cash working capital required is \$700,000. Noncash items such as depreciation expense and items which are not paid for until after the related revenues are collected are not included in the current cash operating expenses. The total working capital is \$1,443,750 of which \$1,300,000 is applicable to Utah operation.

The company estimated an amount of \$1,500,000 for working capital. The difference of \$200,000 is due to

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an additional allowance for minimum bank balances claimed by the company. The company has on hand at all times large amounts representing tax accruals which are, in effect, collected from the customers and are not paid until more than a year after they are accrued. In past years these amounts have at all times been in excess of \$1,000,000. These tax funds are available for bank balances and working capital requirements. We find that \$1,300,000 is a fair and practical measure of the working capital requirements necessary for Utah operations.

The Just and Proper Rate Base

[18] We emphasize the fact that the determination of the value of the plant for rate base purposes is a matter of primary importance. During the course of this case we have heard a great deal of evidence and testimony concerning every aspect of this company's affairs, not only as related to its present rates, but also concerning its development and growth, its financial history, its present capital structure, and its plan for refinancing. The amount which is established as the just and proper rate base has a direct and vital effect upon the tens of thousands of Utah ratepayers, upon the thousands of stockholders, and upon present and future investors in the present and proposed bonds. We recognize their respective interests and equities and our conclusion is that the only just and proper rate base is the actual investment in the property. The facts in our possession are so complete in this respect that we are convinced that any rate base valuation giving effect to changes in price levels

would be unjust and improper. The effect that the changes in price levels have on the fair return for this company will be adequately recognized and compensated for in the rate of return which we shall apply to the just and proper rate base. To make such adjustments in the rate base would be duplication and would result in returns to certain classes of investors which, in periods of high price levels, would be grossly excessive and in periods of low price levels would be inadequate. This Commission finds that the just and proper rate base shall be the prudent investment in property used and useful for Utah service. Any rate base in excess of such investment would result in unjust enrichment of the holders of the common stock who have made no investment and for the reasons heretofore indicated would be unjust and improper.

[19, 20] As heretofore explained the actual investment is classified to show the original cost of the property and the cost to Utah Power & Light Company (referred to as system cost). The excess of system cost over original cost is classified in Account 100.5 Utility Plant Acquisition Adjustments. The fact that an amount is classified in this account does not necessarily establish whether it is to be included or excluded from a prudent investment rate base and from the depreciation base for rate-making purposes. The purpose of the classification was clearly stated by Mr. Justice Cardozo in *American Teleph. & Teleg. Co. v. United States* (1936) 299 US 232, 239, 81 L ed 142, 16 PUR(NS) 225, 230, 57 S Ct 170:

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"Even if the property has been acquired by treaty with an independent utility or a member of a rival system, there is always a possibility that it is nuisance value only—and not market or intrinsic value for the uses of the business—that has dictated the price paid. Accordingly the work of the Commission may be facilitated by spreading on the face of the accounts a statement of the cost as of the time when the property to be valued was first acquired by a utility or dedicated to the public use."

The investment of \$2,154,687 classified in Account 100.5 was made in connection with the integration of several smaller utilities into the present Utah Power & Light Company system. It was practically all incurred about 1913 at the time of formation of the company. The item is somewhat doubtful but we will include this amount in the rate base. The total investment applicable to Utah service to establish the company's property as an assembled electric plant is therefore \$62,670,254 as of December 31, 1941, and \$62,949,502 as of December 31, 1942. The undepreciated rate base is determined as follows:

	1941	1942
Undepreciated plant investment		
Devoted to Utah service	\$62,670,254	\$62,949,502
Working capital ..	1,300,000	1,300,000
Rate base	\$63,970,254	\$64,249,502

Rate of Return

In the case of Bluefield Water Works & Improv. Co. v. West Virginia Pub. Service Commission, 262 US 679, 692, 67 L ed 1176, PUR 1923D 11, 20, 43 S Ct 675, the Su-

preme Court of the United States has stated the underlying factors which should be considered in determining a fair rate of return for a public utility in the following language:

"What annual rate will constitute just compensation depends upon many circumstances and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts. A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties."

[21] The problem of determining a fair rate of return is one that must be considered closely in connection with the fixing of a proper rate base. No precise treatment can be given to either of these elements, both of which are of paramount importance when the Commission is engaged in fixing just and reasonable rates, without giving careful consideration to the other. It is with this point of view, and with the foregoing guiding principles in mind, that we have attacked

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the problem before us. There is a good deal of helpful data in the record on this subject. Exhibit M, introduced by the Commission's staff contains important economic and financial data which we have considered carefully. The data pertains to general interest rates and yields, utility interest rates and yields and recent financing, general economic conditions and comparative stability of utility earnings and earnings of other enterprises. Also presented in this exhibit is evidence as to local conditions in the area served by the Utah Company and as to idle investment funds and the factors contributing to such idle money.

[22, 23] It is apparent that many utilities in recent years have undertaken huge refinancing programs and have taken advantage of prevailing low interest rates which are common to the whole country and available, therefore, to all utilities. In view of the fact that Utah Company is presently engaged in a \$44,000,000 refinancing program it is especially appropriate to consider current interest levels in establishing the fair rate of return in this case. Because of this refinancing program the degree of attention which must, as a practical matter, be given to historical capital costs is not the same in this case as in the usual rate case where refinancing is not imminent. The establishment of a fair rate of return of 6 per cent during a period of low interest rates still leaves a high return for junior securities. As was observed by the Supreme Court of the United States in *Driscoll v. Edison Light & P. Co.* (1939) 307 US 104, 120, 83

L ed 1134, 28 PUR(NS) 65, 75, 59 S Ct 715:

"When bonds and preferred stocks of well-seasoned companies can be floated at low rates, the allowance of an over-all rate of return of a modest percentage will bring handsome yields to the common stock."

Utah Power & Light Company is operating in a favorable market where, according to the evidence, all energy which the company can produce will be absorbed. Allowance has been made for *all* of the company's taxes, though there are authorities who believe that some part of current abnormal war taxes should be borne by the utilities as their contribution to the war effort. *Detroit v. Panhandle Eastern Pipe Line Co.* (1942) FPC Op. No. 80, 45 PUR(NS) 203; *Re Washington Gas Light Co.* (DC 1942) 46 PUR(NS) 1. Disallowance of a portion of tax expense in the process of fixing fair and reasonable rates would have the effect of reducing the rate of return allowed. But what is being done in this case will permit the company to earn the full return allowed without any deduction for such portion of income and excess profits taxes as are associated with the nation's war effort.

[24] Upon consideration of all aspects of this matter we find and conclude that a rate of return of 6 per cent on the rate base we have fixed will be fair and liberal. The only evidence offered by the company on this subject was through the company's president who testified that in his opinion the Commission should allow not less than 6½ per cent as the rate of return on a rate base of not less than \$72,-

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000,000. He failed, however, to give consideration to a number of important factors in arriving at his determination, and was vague and indefinite in his treatment of other elements. This witness did not give any significant consideration to current money market conditions. He admitted that he was unfamiliar with the current money market. Though he lacked familiarity with the current money market, nevertheless, on the basis of the company's most recent estimates regarding the proposed refinancing it expects to sell \$37,000,000 principal amount first mortgage bonds at 3½ per cent and raise an additional \$7,000,000 at approximately 4½ per cent. The company expects to save at least \$532,000 annually in bond interest.

This witness' testimony on the amount of return required was entirely a matter of judgment. Some of the elements entering into such judgment upon which he was quite indefinite and vague, and as to which opinions may differ considerably, were the proper allowances for various classes of securities, the reasonableness or unreasonableness of the company's existing capital structure, the effect of the

The difference between our finding of 6 per cent and the witness' judgment of 6½ per cent as the return requirement is not very large. His estimate was founded largely upon a cost of money study which was based on the present capital structure of the company. Had he properly considered the expected savings from the refinancing of the company's bonds, his estimate of a proper rate of return would have been less than 6 per cent. Our finding of 6 per cent is fully justified by the record in this case, and we believe it to be entirely in accord with prevailing financial and economic conditions, particularly as they affect this company.

Electric Operating Revenues and Expenses

The operating revenues and operating revenue deductions applicable to sales of electric energy in the state of Utah have been determined from the data recorded in the company's books and records and summarized in the income statement. The company's statement of revenues and expenses applicable to Utah sales of electric energy is summarized below:

	1941	1942	1943
Electric Operating Revenues	\$11,841,944	\$13,032,188	\$12,633,934
Operating Revenue Deductions:			
Operating, maintenance, and general expenses	4,477,182	4,927,377	4,683,561
Depreciation	985,271	1,021,644	1,063,951
Taxes (except Federal income)	1,628,442	1,577,980	1,659,205
Federal income and excess profits tax	725,620	1,700,360	1,497,270
Total	\$7,816,515	\$9,227,361	\$8,903,987
Net Electric Operating Revenues	\$4,025,429	\$3,804,827	\$3,729,947

existing capital structure upon historical and prospective capital costs and the effect of doubtful past financial practices and inflation in the company's capital structure upon historical and prospective capital costs.

The data for the years 1941 and 1942 are taken from the amounts recorded on the company's books and for the year 1943 are as estimated by the company. This estimate made several months ago, and which shows 1943

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revenues to be lower than the actual revenue in 1942, is too low because, on the basis of actual operations to date, the company has predicted that 1943 revenues and income will exceed the results in 1942.¹⁰ The revenues and expenses of electric plant leased from Traction Company are included in the above figures but the rental payment is excluded because that property is included in the rate base.

Revenues

Revenues received from electric energy sales in the state of Utah are readily determined from the company's records and no question has developed with respect to the revenues actually received during the years 1941 and 1942. The company has raised a question concerning future revenues due to the expiration of its contract with Utah Copper Company.

Utah Copper Company purchases large quantities of electric energy from Utah Power & Light Company under a special contract at a price of 5.2 mills per kilowatt hour. It is the only customer supplied at this rate, the next lowest rate being about 8.7 mills and the average industrial rate is 11.26 mills per kilowatt hour. The Power Company would not renew the contract with a reduction in the rate proposed by the Copper Company without a provision that the rate would increase with increases in the general commodities index number, and increase to the extent necessary to reflect all increased taxes above those in effect in 1940. The Copper Company would not agree to such a variable provision and is therefore installing a sin-

gle 50,000-kilowatt unit. This unit will not supply its entire requirements and it will still buy energy from the Power Company. For rate case purposes only the company claims that after reflecting the loss of the Copper Company contract in the manner set forth in its Exhibit 31A its net operating revenue before Federal taxes would be reduced about \$1,400,000 in 1941 and 1942 and that on the basis of its calculation it will be unable to meet its preferred stock dividend requirements. However, it is apparent to the Commission that the company's computations and allocations in Exhibit 31A are erroneous and, in the words of the company's president, "Exhibit 31A does not reflect what has happened or what is going to happen." Exhibit 31A serves no useful purpose either as a statement of actual earnings or as a guide to future earnings.

The company, in its brief, disregards the evidence in the record concerning future revenues and relies entirely upon Exhibit 31A for its arguments. The record is clear that the actual revenues were adjusted in that exhibit by merely deducting the gross revenue received from the Copper Company in the years 1941 and 1942. A small amount of production expense and cost of purchased power was eliminated from operating costs but this adjustment was so calculated that it increased the average cost of power produced and purchased. Also a hypothetical charge for "steam standby" service was added to production expense. No transmission expense, general expense, depreciation or taxes, except income taxes were eliminated. Income taxes, however, were not recomputed on the basis of the loss of reve-

¹⁰ This statement was made by the company at the hearing in Case No. 2652, 49 PUR (NS) 193.

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nuces assumed in the exhibit but a reduction in income taxes was made by prorating the taxes computed on another basis. By the method used in the exhibit it is made to appear that the company's earnings were less than were actually realized. The exhibit cannot be relied upon as a guide to future earnings because the company's president stated in the 1941 annual report to the stockholders as follows:

"To offset the ultimate loss of this low-priced business, substantial savings will be made in operating costs by curtailed use of the less efficient steam plants and reduced payments for purchased power. The company is fortunate in being relieved of making a large additional investment to meet other load requirements for the war period which would have been unavoidable had it been necessary to continue carrying the full Copper Company load.

"There is now a better market for the electricity which will become available for sale as the transfer of load takes place. Everything considered, it would appear that under present conditions, it is to the financial advantage of your company to be relieved of this load at the low price at which it is now being supplied. (signed) G. M. Gadsby, President and General Manager."

Mr. Gadsby testified that above-quoted statement was true and valid at the present time and needed no further qualification or modification, yet Exhibit 31A does not reflect the "substantial savings in operating costs" and reflects nothing whatever for "a better market for electricity which will become available for sale as the transfer of load takes place." It appears

to the Commission that the transfer of the low-priced Copper Company load may result in increased revenues to the company, certainly during the war period, and even during the post-war period so long as a reasonable portion of the capacity of the company's plant is utilized. There is ample evidence to indicate that the conditions portrayed in Exhibit 31A will not occur but that on the contrary the company's actual revenues and earnings are increasing and will continue to do so. We find that no adjustment should be made in the actual revenues received during the years 1941 and 1942 and that the estimate for 1943 is too low.

Operation, Maintenance, and General Expenses

[25] The amount of the direct costs of operation, maintenance, and general expenses is determined from the amounts actually expended and recorded on the books for the years 1941 and 1942 and are estimated by the company for the year 1943. The allocation of operating costs to supply Utah customers is deemed reasonable, hence we accept these current expenditures as representing the costs associated with sales and revenues for the respective years, except for an adjustment of expenditures pertaining to the present rate case, the reclassification of plant accounts and the valuation of property. These particular expenditures have been charged to operating expenses as incurred and are included in 1941 expenses in the amount of \$80,925; in 1942 expenses in the amount of \$128,812; and the estimate to complete is included in 1943 estimated expenses in the amount of \$50,000, making a total of \$259,637

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included for the three years under review.¹¹

These costs represent abnormal operating costs during the period 1941-1943. They will not occur in the future therefore need not be included in future operating costs, after the year 1943. The U. S. Supreme Court has said that a company should be allowed the reasonable expenses of presenting its side of the case to a Commission and has indicated that an amortization period of ten years is reasonable under circumstances similar to this case. *Driscoll v. Edison Light & P. Co.* (1939) 307 US 104, 120, 121, 83 L ed 1134, 28 PUR(NS) 65, 59 S Ct 715. The amortization charge over a 10-year period for the above-described charges will be approximately \$26,000 annually and we will include that amount in operating expenses instead of the amounts actually charged thereto, for the purpose of equalizing the annual operating costs. Operation, maintenance, and general expense after this adjustment will therefore be \$4,422,357 for 1941, \$4,824,565 for 1942, and \$4,659,561 estimated for 1943.

Annual Depreciation Expense

[26, 27] The Commission's staff pointed out in its brief that the sole issue with respect to depreciation is whether the annual allowance to be included in operating expenses should be based on prudent investment or should be based on some amount in excess of investment. The service life estimates and depreciation rates adopt-

ed by the staff are the same as the company has used, and the 6 per cent sinking-fund depreciation method followed by the staff produces results equivalent to the 6 per cent compound-interest depreciation method used by the company. The company did not raise any other issue in its briefs, except a very minor one discussed hereinafter. These facts lead us to conclude that the company's only argument relates to the depreciation base used by the staff.

In connection with the minor exception referred to counsel for the company urges that "if the company is required to employ depreciation accruals for the retirement of its bonds or invest in other securities, the yield upon the reserve would be much lower than 6 per cent." Depreciation accruals and the accumulated reserve are provided for one specific purpose—to protect the investment against the loss incurred due to the eventual retirement of depreciable property. The utility is restricted in its use of the depreciation reserve and specifically prohibited from diverting any portion to surplus or to any other use. The company has not used depreciation accruals to retire bonds or invest in securities as is evidenced by the fact that property accounts and bonded indebtedness have increased to a far greater extent than the depreciation reserve. We find that the argument of the company is erroneous and unsupported by any evidence. It apparently tried to adopt arguments similar to those made by the companies in the case of *Federal Power Commission v. Natural Gas Pipeline Co.* (1942) 315 US 575, 86 L ed 1037, 42 PUR(NS) 129, 62 S Ct 736. The Supreme

¹¹ An amount of \$136,256 was expended in connection with the reclassification of plant accounts during the years 1939 and 1940 but those years are not under review for purpose of the present case hence no adjustment need be made.

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Court, however, in that case rejected all arguments that the sinking-fund interest rate should be lower than the rate of return.

The staff recommends an annual allowance for depreciation in the amount of \$273,635. This amount is the 6 per cent sinking-fund depreciation annuity based on original cost of plant plus the amortization of the amounts representing the excess of cost to the company over the original cost (Account 100.5). The original cost of plant is depreciated over the life of the property groups and the excess (Account 100.5) is amortized over the composite life of the property, estimated by the company to be forty-six years. Using this method it is a mathematical fact that the company will recover, through the depreciation allowance, the capital it has invested in any property group at the end of the service life of each group. All of the present property groups have a limited term of life, except land, and at the end of each term the investment therein will have been restored. There is no question whatever concerning the fact that the sinking-fund depreciation method and the compound interest depreciation method will restore the cost of the plant over its service life and the company itself proposed the latter method. The accumulated depreciation reserves are exactly the same for both methods.

The company in its briefs has claimed that depreciation should be computed on a "fair value" depreciation base. Its computed amount of depreciation is arrived at as follows: The president of the company made a judgment estimate of \$72,000,000 as a "present condition fair value rate

base." Another witness translated this amount to \$82,383,000 undepreciated, stating that accrued depreciation was \$10,383,000. \$2,597,000 was assigned to land and \$309,000 to automobiles, depreciation on them being provided for elsewhere in operating expenses, leaving a depreciable base of \$79,477,000. The depreciation rates applied to this base result in a depreciation annuity of \$366,500 and 6 per cent interest on the depreciation reserve of \$10,383,000 results in an amount of \$623,000, making a total annual depreciation charge of \$989,500 under the compound interest method and \$366,500 under the sinking-fund method.

This process of computation was only a mechanical job. Although company witnesses were questioned, none of them could give any reason why it was fair or necessary to compute depreciation on any amount in excess of cost. The process of building up the \$72,000,000 estimate by \$10,383,000 is wholly unfounded because the witness who made that estimate considered only the present condition of the property and was unable to give any breakdown on the \$72,000,000. He included some amounts for value for serviceability, organization expense, intangibles, capital stock expense, and intercompany fees and profits, and, as we read his testimony, some amount for going value, none of which are depreciable but which have been included in the company's depreciation base. The company, in its briefs, takes inconsistent positions. In the discussion of the rate base it insists that the above-mentioned items be included. In the discussion of the depreciation base it turns about to insist that none of the

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items are included, yet only land has been excluded in the computation.

If we accepted the company's depreciation claims we would permit it to recover \$18,000,000 in excess of the investment in the property from the ratepayers during the life of the property. The company's brief says, although no one so testified, that the excess is for the purpose of replacing the property, citing *United R. & Electric Co. v. West*, 280 US 234, 253, 254, 74 L ed 390, PUR1930A 225, 50 S Ct 123.¹² We cannot agree with this contention. The company, both by the instructions in the prescribed Uniform System of Accounts and by order of this Commission, is required to compute annual depreciation expense on the cost of plant. The excess it claims here if allowed will go straight to earned surplus to be distributed as dividends. The theory that depreciation allowances must be made currently for the purpose of replacing the property in the future at a higher price level would result in grave injustice to the Utah ratepayers. The revenues collected under this theory would be a source of secret profits to the utility. Even in those rare instances where excessive depreciation funds have been earmarked in depreciation reserves and not distributed as profits, no Commission has ever been allowed to deduct the excessive reserves as a capital contribution. Certainly it is not the responsibility of the ratepayers to make capital contributions, upon which the utility expects a return. The ratepayers are required to provide the proper amount of depreciation expense, as an element of the *cost* of service, to make

good the *capital* consumed in utility service and thus keep the actual *investment* unimpaired. *Lindheimer v. Illinois Bell Teleph. Co.* (1934) 292 US 151, 78 L ed 1182, 3 PUR(NS) 337, 54 S Ct 658.

There are three classic devices through which the utilities seek to obtain a secret profit through the medium of depreciation charges. They are (1) the use of high depreciation rates (short service lives) coupled with the use of a "present condition" or "percent condition" rate base wherein the accrued depreciation is "observed" or "viewed"; (2) the application of depreciation rates to some sort of an inflated depreciation base such as "reproduction cost new," "translated" or "trended" investment, or other "fair value"; and (3) the use of the sinking-fund method with the interest rate lower than the rate of return. Such attempts to obtain a hidden profit violate the principle that annual and accrued depreciation are but two aspects of one economic fact—that property depreciates and is consumed in service. The Supreme Court of the United States has given us adequate standards by which to protect the rights of the company and the ratepayers in the matter of depreciation, and we shall observe those standards. *Federal Power Commission v. Natural Gas Pipeline Co. supra*.

In this case we have a curious situation with respect to the amount of accrued depreciation reflected in the company's "fair value" rate base of \$72,000,000 wherein the witness said it represented "present condition" but could not give any breakdown of the final answer, yet another witness interprets the figures in terms of the com-

¹² Company witnesses testified that future replacement cost could not be predicted.

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pany's "Plan for Depreciation Accounting," adds \$10,383,000, and then proceeds to compute "annual loss in economic value" on the gross figure.¹³ We consider this process to be an attempt to develop some figures to show that present rates are reasonable. It has no substance or reality, even from the viewpoint of the fair value theory. We must distinguish between what is merely counsel's argument and the testimony of the witnesses, particularly in connection with annual depreciation. The president of the company testified that "certainly the determination of annual depreciation expense would be the application of the various percentages determined for depreciation to the cost of the property as reflected in the system cost." No witness in the case, either for the company or the staff, testified that annual depreciation expense should be computed on any base in excess of system cost.

We find that depreciation expense shall be computed by the 6 per cent sinking-fund depreciation method using the agreed-upon service lives of property set forth in the "Plan for Depreciation Accounting," and that this method provides consistent treatment with respect to the annual and accrued depreciation. We find that the proper depreciation base is the original cost of the property, plus the amount in Account 100.5 which amount shall be amortized over the composite life of the property. The annual depreciation expense, including amortization, applicable to property devoted to Utah service, is \$273,635.

¹³ The witness stated he did not know what depreciation expense meant, but that he had computed "loss in economic value." He also testified that, according to the company's figures, the property had appreciated from the claimed investment of \$66,908,440 to the "pres-

Federal Income Tax, Excess Profits Tax, and Surtax

[28, 29] This is our first rate case decision since enactment of the Revenue Act of 1942. The provisions of the new tax law greatly affect excess net income, and therefore have marked importance in a rate case where a determination of reasonable earnings must be made.

There are three distinct taxes on income embodied in the 1942 Act. They are the 24 per cent normal tax, the 16 per cent surtax, and the 90 per cent excess profits tax.¹⁴ In the computation of the excess profits tax liberal credits are allowed, apparently so that only truly excess profits will be taken away. In the computation of the surtax a generous concession was made, to public utilities only, by allowing a credit for dividends paid on preferred stock. Under the new law the income taxes increase sharply when income from excessive rates produces large earnings subject to the excess profits tax rate.

The company has submitted its tax return for the year 1941 to the Bureau of Internal Revenue. That return was prepared on the same basis as returns filed in prior years, which have been audited and closed through the year 1939. The 1942 tax return had not been filed at the close of the record in this case but a computation of income taxes for the year 1942, based on the complete income for the year 1942 and according to the Revenue Act of 1942, is in the record. The estimate of 1942 taxes is the same as the company re-

ent condition fair value" of \$72,000,000 and there was no "loss in economic value."

¹⁴ The excess profits tax rate of 90 per cent is subject to a credit or refund of 10 per cent so the net rate of 81 per cent is used hereafter to avoid repetition of both percentages.

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corded on its books for that year but is greatly different from the amount recently reported to the Bureau of Internal Revenue. The estimated taxes for 1942 include an amount of \$1,-486,000 for excess profits taxes but a witness for the company testified in Case No. 2652, 49 PUR(NS) 193, that no excess profits tax was reported in the 1942 tax return. This makes a difference of approximately \$900,000 more Federal taxes claimed for rate case purposes than reported to the government.¹⁵

The difference in the amount of taxes accrued on the books and reported in the tax returns is due principally to a difference in depreciation rates used in computing the depreciation deduction for book purposes and for the tax returns. The Bureau of Internal Revenue established a depreciation rate of 2.7 per cent for income tax purposes which the company uses in the tax return, but the computation for income taxes accrued on the books is based on a depreciation rate of 1.98 per cent. Obviously the effect of lowering the depreciation rate is to decrease the amount of the depreciation deduction and increase taxable net income and the amount of income tax. Another important adjustment made on the income tax return is the amortization of emergency facilities over a 60-month period allowed by the tax law.

The company presented considerable evidence to show that the tax depreciation rate of 2.7 per cent was exces-

sive and that the rate was questioned by the Bureau of Internal Revenue in returns filed subsequent to 1939. However, the tax depreciation rate of 1.98 per cent represents a drastic reduction and has not been agreed to by the company for tax purposes or adopted by the Bureau of Internal Revenue.

The final determination of these and other tax problems is of course beyond our province and we cannot predict with exactness the final tax liability. We are disposed to resolve doubts in favor of the company and assume that the possible tax contingency will eventuate. We do this even though the company, subsequent to the close of the record, has informed us that recent conferences with the staff of the Bureau of Internal Revenue indicate that a tax depreciation rate of 2.5 per cent will be agreed upon. We have considered the many phases of the tax problem, some of which we have not discussed because it would unduly lengthen this report. We have decided to make allowance in operating expenses for present and future income taxes on the basis of the Revenue Act of 1942 and the taxable net income as reported to the Bureau of Internal Revenue with the exception that the tax depreciation adjustment will be computed at the depreciation rate of 1.98 per cent instead of 2.7 per cent. We assert that this is a liberal interpretation and allows for any tax contingency which may develop. We shall of course reflect in our allowance for income taxes the tax saving which will result from the reduction in earnings to a fair return. We find that the amount of \$174,651 represents the fair and reasonable allowance for normal income taxes associated with a fair

¹⁵ In view of the fact that the company does not report an excess profits tax liability in its tax return the amount of excess profits taxes claimed for rate-making purposes is referred to as the computed excess profits tax.

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return in 1941, and \$178,672 for 1942 and 1943.

The claim of the company that excess profits taxes should be passed along to the ratepayers is deserving of our attention because the company is attempting to show that its rates are reasonable by including \$1,480,000 of computed excess profits taxes in operating expenses applicable to Utah customers.

There is conclusive and uncontroverted evidence in the record which proves that under reasonable rates and earnings the company will not be subject to the excess profits tax. This is true, even though the company has admitted that its invested capital for excess profits tax purposes has been reduced \$7,356,608 by dividends paid out of capital. This would have amounted to only \$450,000 if common stock dividends in the amount of \$7,200,000 had not been paid to its parent holding company. It would be an imposition on present Utah ratepayers if this company should be permitted to recoup an allowance for excess profits taxes which are computed on the basis of the above impairment of invested capital resulting from the payment of those common stock dividends. The injustice to Utah ratepayers is obvious when excessive rates and earnings are made to appear to be reasonable by means of computed excess profits taxes which have not been paid or reported to the government.

We reject the company's claim that its computed (but not reported or paid) excess profits taxes should be included in the cost of service and thus passed on to the ratepayers. With

excessive rates and earnings before taxes and a large amount of computed tax expense the result is that net operating income is increased only 19 per cent, hence the rates and earnings are made to appear to be reasonable. Thus it is clear that any argument to the effect that present rates of the company are reasonable is also an argument that Utah ratepayers must assume the burden of computed excess profits taxes and all other taxes paid by the company. The company would be relieved of its share of the cost of the war at a time when no person or organization can expect to remain unaffected by the greatest emergency ever existing in modern times. In the case of Salt Lake City v. Utah Light & Traction Co. 52 Utah 210, 229, PUR1918F 377, 173 Pac 556, 3 ALR 715, the supreme court of Utah stated that when conditions are grossly abnormal on account of war "every individual and every great enterprise must bear his or its share of the burden incident to the great conflict." The opinions of other Commissions support our view that abnormal taxes should not be used as a justification for excessive rates.¹⁶

In the instant case we need not determine what portion of the war taxes should be borne by the utility because the credits and exemptions to this company under the Revenue Act of 1942 are liberal enough to exempt it from the payment of excess profits taxes under reasonable rates and earnings.

The credit for preferred stock dividends allowed public utility corporations also exempts the company from the payment of the surtax. Thus we

¹⁶ *Detroit v. Panhandle Eastern Pipe Line Co.* (1942) FPC Op. No. 80, 45 PUR(NS) 203; *Re Washington Gas Light Co.* (DC 1942) 46 PUR(NS) 1.

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need make allowance only for the 24 per cent normal tax.

Summary of Operating Revenues and Expenses

The Commission finds that the following amounts represent the actual revenues and operating costs for the years 1941 and 1942:

	1941	1942
Electric Revenues	\$11,841,944	\$13,032,188
Operating Revenues		
Deductions:		
Operation, Maintenance, and General Expense	4,422,357	4,824,565
Depreciation Expense	273,635	273,635
Taxes (except Federal Income) ...	1,628,442	1,577,980
Federal Income Tax	174,651	178,672
Total Cost of Operation	\$6,499,085	\$6,854,852
Net Electric Operating Revenues	\$5,342,859	\$6,177,336

It should be noted again that the company now estimates that 1943 revenues and income will exceed 1942 revenues and income.

Reasonable Cost of Service and Rate Reduction

The total cost of electric service to Utah *ratepayers* is found by adding the fair and reasonable allowance for return to the actual and necessary costs of operation. The fair return for 1941 is \$3,838,215 and for 1942 is \$3,854,970 (6 per cent of the proper rate base). The total cost of service is therefore found as follows:

	1941	1942
Total Operating Costs	\$6,499,085	\$6,854,852
Fair Return	3,838,215	3,854,970
Total Cost of Service	\$10,337,300	\$10,709,822

The Commission finds that the company has been earning in excess of a

fair return by collecting excessive revenues from Utah customers during the years 1941 and 1942 (and revenues and earnings in 1943 are estimated by the company to exceed those for 1942) as follows:

	1941	1942
Electric Revenues	\$11,841,944	\$13,032,188
Operating Total Cost of Service	10,337,300	10,709,822
Excess above Fair Return	\$1,504,644	\$2,322,366

[30] The increase in revenues in the year 1942 reflects increased sales due to the expansion of both industrial and military establishments in connection with the national war effort. The company apparently received excess profits in the amount of \$800,000 in 1942 from this war business in addition to the excess profits of \$1,500,000 earned on its 1941 business. We believe this situation is not consistent with the intent of the provisions of Title 76 of the Utah Code and is clearly out of harmony with the stabilization program laid down by the directive of the President of the United States, issued April 8, 1943. This directive states:

"The attention of all agencies of the Federal government, and of all state and municipal authorities, concerned with the rates of common carriers or other public utilities, is directed to the stabilization program of which this order is a part so that rate increases will be disapproved and rate reductions effected, consistently with the act of October 2, 1942, and other applicable Federal, state, or municipal law, in order to keep down the cost of living and effectuate the purpose of the stabilization program."

The fact that this nation is engaged

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in a great war for survival is a compelling reason why we should order reasonable rates now and reduce excessive profits. Such action is consistent with the law of this state. Title 76 of the Utah Code Annotated, 1943, does not authorize unjust and unreasonable rates at any time and we would violate the laws of our state and the specific directive of the President of the United States if we failed in our duty to order just and reasonable rates. We cannot, as the company has urged, postpone a rate reduction until that elusive period called "normal conditions" arrives, if ever.

During the years 1942 and 1943 there has been a considerable increase in industrial activity and in the population of the area in Utah served by the company, some of which is temporary. There are within that area now taking service from the company large military camps, plants, and storage facilities devoted to the production and handling of war munitions, and temporary housing units. There is also increased activity on the part of both metal and coal mines which may subside in the postwar years to more nearly the pre-war volume of production. The company's president testified, in connection with the merger and refinancing plans of the company, before this Commission (Case No. 2652, *supra*) and the Securities and Exchange Commission, that in his projection of revenues during the first five postwar years he estimated that the Copper Company would supply its own requirements; that the Geneva steel plant, together with Geneva coal mine, would operate after the war at approximate capacity, the Geneva mine taking 13,000,000 kilowatt hours per year, and that the

Geneva steel plant would pay Utah Power & Light Company about \$200,000 per year; that 25 per cent of other direct war projects would remain effective; that the company would have the same number of residential users in the first of the five postwar years as it had in the month of August 1942, and that the number of such users would gradually increase. Since making the above estimate, however, the company has negotiated a new contract with the Copper Company which is to run for a term of five years from the expiration of the present contract, which has been extended to a time sixty days after completion of the Copper Company's steam electric generating plant now under construction. The new contract provides that the Copper Company may cancel the same at any time after two years from the date of commencement of service thereunder or that it may elect to extend the contract to a total term of ten years. The contract provides that the minimum monthly bills for service rendered thereunder shall be not less than \$30,000. It is obvious that the company will receive substantial revenues from the Copper Company under this new contract. As we view the whole pattern of postwar electric revenues for the company it now appears that without a rate reduction they would have equalled or exceeded the revenues collected during the year 1941. There is no presently foreseeable condition which would warrant a conclusion that future revenues or earnings would be less than those of the year 1941.

We are of the opinion that the revenues, operating expenses, and earnings during the year 1941 may be used as a safe and conservative basis upon

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which to gauge future earnings. We find and conclude that present rates are unjust and unreasonable and we determine that the just and reasonable rates to be hereafter charged by Utah Power & Light Company to customers in the state of Utah, shall reflect an immediate reduction of not less than \$1,504,644 when applied to the volume of electric sales in this state during the year 1941.

From the actual experience of the company in 1942 and 1943 we must conclude that sales incident to war conditions will in the future produce earnings in excess of a fair return after giving effect to the rate reduction which we are now ordering. We recognize that the amount of the company taxes will not remain constant and that the company must provide for future maintenance and rehabilitation of plant accumulated during the war period. Because of such contingencies we have based our rate reduction on the operations for the year 1941 instead of 1942.

The fact that certain maintenance work has been postponed during the war period due to the shortage of materials and labor will result in increased costs for maintenance and rehabilitation during the immediate postwar period. We hereby put the company on notice that the Commission expects that earnings in excess of a fair return will be retained by the company for the specific purpose of providing for postponed maintenance and rehabilitation and to improve the financial condition of the company. In view of the fact that we have predicated our rate reduction on the lower earnings of 1941 instead of the much higher and abnormal earnings of 1942 and 1943, the Commission will not be in-

clined to look with favor upon an application by the company for increased rates in the immediate postwar years based upon operating expenses which include the cost of deferred maintenance and rehabilitation of plant.

Upon consideration of the entire record herein and the foregoing report, the Commission finds and concludes:

1. The Utah Power & Light Company is a corporation organized and existing under the laws of the state of Maine, doing business in the state of Utah with its principal office at Salt Lake City, Utah.

2. The company has two subsidiaries, the Western Colorado Power Company and Utah Light and Traction Company, the securities of which it owns to the extent of 99.97 per cent and 99.98 per cent of the voting power of the respective subsidiaries.

3. The company is controlled by Electric Power & Light Corporation which owns its securities representing 92.39 per cent of the voting power, Electric Power & Light Corporation in turn being a subsidiary of Electric Bond and Share Company which owns its securities representing 46.83 per cent of the voting power.

4. The company is a public utility owning and operating an interconnected electric power system in southeastern Idaho, northern and central Utah, and southwestern Wyoming. More than 90 per cent of its electric revenues being derived from sales of electric energy in the state of Utah. So far as its operations are applicable to the state of Utah it is subject to the jurisdiction of and regulation by this Commission under the provisions of Title 76 of the Utah Code Annotated, 1943.

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5. The company leases and operates certain electric properties, which are owned by Utah Light and Traction Company, under the terms of a lease agreement dated January 2, 1915, for a period of ninety-nine years from January 1, 1915. This Commission on July 17, 1943, gave its consent and approval to a plan of consolidation or merger of the company and the Traction Company. If the proposed merger or consolidation is carried out the company will acquire at the original cost thereof all Traction Company property and assets, assume or forgive all indebtedness, cancel Traction Company stock, and complete its dissolution. Included in the properties which the company will acquire will be street railway, trolley coach, and bus transportation facilities.

6. The company under the aforesaid lease retains all earnings derived from the operation of the leased property and pays all operating expenses.

7. The electric properties of the Utah Power & Light Company and the Utah Light and Traction Company are under common control and ownership and are operated as a single, interconnected, and integrated system for the production, purchase, interchange, transmission, distribution, and sale of electric energy.

8. The rates and charges demanded, charged, and collected by the company for the sale of electric energy in the state of Utah, together with the classifications, rules, regulation, practices, and contracts effecting such rates are subject to the jurisdiction of this Commission. Also subject to the jurisdiction of this Commission under § 76-4-22 of the Utah Code Annotated, 1943, are the accounts of the company

and the Traction Company and the manner in which such accounts are kept. Uniform Systems of Accounts have been prescribed by the Commission for both companies.

9. The gross investment, before depreciation, of the company's owned and leased electric plant used and useful for electric service in the state of Utah is not more than \$62,670,254 as of December 31, 1941, and not more than \$62,949,502 as of December 31, 1942.

10. The sum of \$1,300,000 is an adequate and liberal allowance for materials, supplies, and cash working capital necessary for the company's operations to supply customers in the state of Utah.

11. The company's claimed investment in property in the amount of \$66,-908,440 erroneously includes items and amounts that are (1) improper payments to Electric Bond and Share Company or associated companies, (2) computed amounts never actually paid, and (3) amounts which represent neither tangible nor intangible assets.

12. The evidence offered by the company relating to the reproduction cost new, less depreciation, of its properties used and useful in serving Utah customers, is unreliable and inherently fallacious, and is immaterial, irrelevant and incompetent in this case.

13. The evidence offered by the company and received pertaining to the trended or translated value as of July 1, 1942, of the claimed investment is inaccurate, conjectural, based on improper assumptions and estimates and is immaterial, irrelevant and incompetent and cannot properly be relied upon in fixing a just and proper rate

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base or in fixing fair and reasonable rates.

14. The amount of \$19,433,498 which the company has added to actual investment to arrive at undepreciated "fair value" of \$82,383,000 is an unidentified amount, arrived at by an unknown and unexplained method, not related to any tangible or intangible property or investment, but which includes the arbitrary capitalization of value for serviceability, going value, improper capital stock expense, improper awards, and fees and profits paid to its affiliates, which have impaired the financial position of the company and have added nothing of value to the property.

15. The company's "present condition fair value" rate base of \$72,000,000 includes the items enumerated in Finding 14, above, and is hypothetical, conjectural, and inherently fallacious, and cannot be considered as having probative value in determining a just and proper rate base, or fair and reasonable rates.

16. For rate-making purposes both annual and accrued depreciation must be treated consistently and must be based upon actual investment in electric plant in order to deal equitably with the company, its investors, and the ratepayers.

17. The sinking-fund depreciation method, properly applied, produces results equivalent to other recognized depreciation methods and requires no deduction from the rate base for accrued depreciation when the sinking-fund interest rate is the same as the rate of return.

18. The just and proper rate base for the Utah Power & Light Company is the amount actually and prudently

invested in property used and useful in rendering service in Utah. The undepreciated prudent investment rate base is determined as follows:

	December 31, 1941	December 31, 1942
Owned plant	\$50,517,242	\$50,796,206
Leased plant	12,153,012	12,153,296
Total Plant	\$62,670,254	\$62,949,502
Working capital	1,300,000	1,300,000
Maximum undepreciated investment rate base	\$63,970,254	\$64,249,502

and the said rate base reflects the dollars actually invested to create the company's property as an assembled electric plant and an established concern in successful operation.

19. The inclusion in the prudent investment rate base by the Commission of \$2,154,687 in Account 100.5 Electric Plant Acquisition Adjustments, representing the amount paid by Electric Bond and Share Company, or associated companies, in excess of the original cost of the properties when first devoted to public service, is for the purpose of including all expenditures incurred in assembling the property into an integrated power system and for the purpose of assuring ample and liberal return during the pending reorganization and refinancing of the company and is not to be construed as being properly includable in the rate base for any other reason.

20. The company's electric operating revenues from Utah sales totaled \$11,841,944 for 1941, \$13,032,188 for 1942, and it is estimated that 1943 revenues will exceed those of 1942.

21. The company's electric operating expenses applicable to Utah sales (exclusive of depreciation, rate case expense, and Federal income taxes)

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are \$6,024,800 for 1941 and \$6,376,545 for 1942.

22. The amount of \$2,154,687 in Account No. 100.5 Utility Plant Acquisition Adjustments should be amortized over the composite life of the acquired property.

23. The company's claimed annual allowance for depreciation is computed upon the elements of "fair value" enumerated in Finding 14 above, is inflated by amounts of depreciation expense based on hypothetical values not subject to depreciation, and is not supported by the record.

24. The annual allowance for amortization and depreciation expense, applicable to Utah sales is \$273,635 computed by the 6 per cent sinking-fund depreciation method, the agreed-upon service lives, and based upon actual investment.

25. The expenditures made by the company in connection with its original cost study, reproduction cost new study, and the rate case, totaling \$259,637 for the years 1941, 1942, and 1943, are spread over a 10-year period and the annual amount of \$26,000 is allowed in operating expenses for rate-making purposes.

26. Federal income tax is allowed in full, based on normal tax net income and normal tax rate of 24 per cent and is not more than \$174,651 for 1941 and \$178,672 for 1942, when associated with fair and reasonable earnings. Under reasonable rates and earnings the company will not have to pay Federal surtaxes or Federal excess profits taxes under the Revenue Act of 1942.

27. A fair and reasonable rate of return for the company is 6 per cent per annum.

28. The total cost of service to Utah

ratepayers is the sum of the necessary costs of operation and the fair and reasonable allowance for return (6 per cent on the proper rate base) and is found as follows:

	1941	1942
Total Operating Costs	\$6,499,085	\$6,854,852
Fair Return	3,838,215	3,854,970
Total cost of Service	\$10,337,300	\$10,709,822

29. The company's electric operating revenues from Utah sales less the total cost of service, exceed a fair return (6 per cent on the rate base) as follows:

	1941	1942
Electric operating revenues	\$11,841,944	\$13,032,188
Total cost of service	10,337,300	10,709,822
Excess earnings above fair return	\$1,504,644	\$2,322,366

30. The rates and charges made, demanded, and received by the company for sales of electric energy in the state of Utah during the years 1941 and 1942 were unjust, unreasonable, and excessive in the amounts set forth above in Finding 29, and the rates and charges now being made, demanded, and received by the company for such service are unjust, unreasonable, and excessive.

31. The rates and charges of the company, after reflecting the reduction of \$1,504,644 based on the 1941 volume of sales, which reduction will be ordered, will be just and reasonable.

An appropriate order will be entered in accordance with the foregoing report, findings of fact, and conclusions.

HACKING, Commissioner, dissenting in part: I have withheld my name from the majority report for the reason that under the present high earnings of the company a plan could be adopted that would provide the com-

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pany's customers with higher reductions in rates, and at the same time protect the company to a certain extent in the postwar period when I anticipate the company's earnings will decline materially, and for the further reason that some maintenance in the company's properties is being postponed. The company is experiencing the highest earnings in its history during the present war times, a large amount of which is derived from temporary military and defense plant installations. I am convinced that it would be preferable to make provision for the company's customers to receive the greatest possible benefits during the present period in the way of rate reductions.

I concur in the amount found as the rate base in the Commission's report and order, and I concur in the rate of return found therein. Along the lines indicated above I believe that the rate reduction should be \$1,000,000 based on 1942 volume of sales, and that any

excess earnings, after such reduction, and above 6 per cent on the rate base, should be disposed of in the following manner:

a. The company during this period of scarcity of materials and labor should provide a fund of at least \$300,000 annually to be set aside, but to remain under the control of the Commission and used for the purpose of any maintenance and rehabilitation in the property which may have been postponed during this period of scarcity of labor and materials, and further, to furnish employment for discharged military and defense work personnel after the termination of the war.

b. That any remaining excess above 6 per cent on the rate base should be refunded to the customers of the company during the year in which the excess is earned.

c. That for the current year of 1943 the plan for refund and reserve should be retroactive to July 1, 1943.

TENNESSEE RAILROAD AND PUBLIC UTILITIES COMMISSION

Re Tri-City Utilities Company et al.

[Docket No. 2628.]

Consolidation, merger, and sale, § 13 — Necessity of Commission approval — Sale to municipality.

1. Approval or consent of the Commission is not a requisite for the sale of property of a public utility company to a municipal corporation, p. 178.

Municipal plants, § 17 — Authority to operate.

2. A municipality is authorized by the Municipal Electric Plant Act of 1935, Public Acts, Chap. 32, to acquire, operate, and maintain an electric plant within or without the corporate limits and to provide electric service to the users or consumers of electric power and energy, p. 178.

Consolidation, merger, and sale, § 6 — Right of Commission to approve — Sale to municipality.

3. The Public Utilities Act does not prohibit the Commission from granting

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its approval of the sale of properties by an electric utility company to a municipality if it sees fit to do so, regardless of the fact that such sale may be made without the consent and approval of the Commission, p. 179.

Consolidation, merger, and sale, § 6 — Powers of Commission — Termination of action for penalties.

4. The Commission has authority, in order to facilitate the sale of utility property by an electric company to a municipality, if it finds that the sale is legal and in the public interest, to withdraw information certified to the district attorney in a pending action to recover penalties for violation of the statute prohibiting discrimination and seeking a mandatory injunction to compel the company to obey and abide by orders of the Commission relative to discontinuance of discriminatory practices, p. 179.

Consolidation, merger, and sale, § 22 — Grounds for approval — Elimination of competition — Sale to municipality — Ending of discrimination proceeding.

5. The ending of a period of destructive competition between an electric company and a municipality by the sale of the electric company's property to the municipality is a public benefit of considerable consequence, and any benefit which might be derived from the imposition of penalties for unlawful discrimination in a pending action which would as a consequence be discontinued is by comparison of minor importance, p. 179.

Commissions, § 11 — Jurisdiction and powers — Rules and regulations — Procedure.

6. The Public Utilities Act grants the Commission broad discretionary authority to be exercised for the benefit and welfare of the persons who use the essential utility services in the state, and the Commission is authorized to prescribe such rules and regulations with reference to its procedure, investigations, and hearings as it deems best, and it may exercise this procedure in such manner as best to serve the public policy of the state and the welfare of citizens using utility services, p. 179.

Discrimination, § 1 — Action to prevent — Dismissal by consent decree — Sale of property.

7. Withdrawal of an information which was the basis of a suit against an electric company to recover penalties and to prohibit discriminatory practices and consent to the entry of a decree dismissing the suit, costs to be taxed against the company, was held to be in the public interest in order to facilitate the sale of the company's properties to a municipality, p. 180.

[July 24, 1943; August 19, 1943.]

PETITIONS by a public utility company and a city for approval of the sale of the facilities of the company to the city; approval granted and termination of pending suit based on alleged discrimination ordered.

By the COMMISSION: The petitioners herein have separately filed petitions seeking approval of an agreement in writing entered into on July 15, 1943, between Tri-City Util-

ities Company, a Kentucky corporation which is engaged in the distribution and sale of electricity at Jellico, Tennessee, and the city of Jellico, a municipal corporation which likewise

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distributes and sells electricity in the same community.

The petitioner, Tri-City Utilities Company, is a public utility and is subject to the jurisdiction of this Commission under the provisions of the Code of Tennessee, §§ 5447 to 5470. It is the successor to Kentucky-Tennessee Light and Power Company, an electric utility which formerly served thirty-five communities in Tennessee, but sold all its properties except that at Jellico to municipalities, coöperatives, or the Tennessee Valley Authority. The only Tennessee properties now owned by this petitioner are those in Jellico, but it also owns in connection therewith a distribution system serving customers in the unincorporated town of Jellico, Kentucky, and Whitley county, Kentucky.

The petition filed by the city of Jellico recites that it is a municipal corporation established under the laws of the state of Tennessee, and that it is authorized under the Municipal Electric Plant Act, Chap. 32 of the Public Acts of 1935, to purchase and own electric properties and engage in the distribution of electric current, and that it is further authorized to engage in the distribution of electricity in the state of Kentucky by Chaps. 174 and 197, Private Acts of Tennessee of 1941.

Both petitions recite that the utility company and the municipality have entered into an agreement for the sale and transfer of the entire electric generation and distribution properties in the Jellico Division, which includes generation and distribution facilities in Tennessee and distribution facilities in Kentucky. The contract ex-

cludes accounts receivable, unbilled revenue, and materials and supplies, and the sale is for a consideration of \$60,000.

Prior to the consummation of the contract it is requisite that approval be obtained from various governmental agencies. The utility company is a subsidiary or affiliate of the Associated Gas and Electric Corporation, which is now being administered in Federal receivership in the United States district court for the southern district of New York, Docket No. 75,635, which is a proceeding pursuant to Chap. X of the Bankruptcy Act. The trustees of the Associated Gas and Electric Corporation have approved the sale on behalf of the receivership and formal approval by the court is expected in due course.

The Public Service Commission of Kentucky by order dated July 14, 1943, authorized the sale of the facilities to the city of Jellico.

[1, 2] The approval or consent of the state of Tennessee, of the Railroad and Public Utilities Commission, or of any other agency of the state of Tennessee is not a requisite for the sale or other disposition of the property of any public utility to any county, municipal corporation, or any subdivision of the state of Tennessee. Public Acts of 1935, Chap. 42, § 2. The municipalities of the state are authorized to acquire, operate, and maintain electric plants within or without the corporate limits of such municipalities and to provide electric service to the users or consumers of electric power and energy. The Municipal Electric Plant Act of 1935, Public Acts, Chap. 32.

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[3] The Tri-City Utilities Company may sell its properties to the city of Jellico with or without the consent and approval of this Commission, but the act does not prohibit the Commission from granting its approval if it sees fit to do so regardless of its jurisdiction in the premises.

[4-6] The petitioners in this matter were both fully informed as to the Commission's lack of jurisdiction in matters involving the sale of utility properties to municipal corporations and yet they have asked for the approval of the Commission as to this particular sale. The reason for this lies in the following circumstances: The contract to which the petitioners have subscribed is subject to the final dismissal of a cause pending in Campbell county chancery court, styled *State ex rel. Dunlap v. Tri-City Utilities Co.* This cause was filed on or about the 14th day of June, 1943 by Honorable Howard H. Baker, district attorney for the nineteenth judicial district of Tennessee, of which Campbell county is a part, pursuant to an information related to him by the Commission, charging the defendant company with violation of the statutes of the state prohibiting discrimination between customers of electric companies. Code of Tennessee, §§ 5416, 5420.

The original bill filed by the said district attorney prays that the state of Tennessee have and recover a sum not less than \$500 nor more than \$2,000 for each violation of the said statutes, and further that a mandatory injunction be granted enjoining and commanding the defendant to obey and abide by the orders of the

Commission relative to discontinuance of discriminatory practices.

When the Commission first cited the utility charging discrimination, the company asked the Commission to advise whether the purpose of the citation was corrective or for the collection of penalties. The company was advised that under any circumstances the proceedings were corrective and that possibly, if the facts warranted, the Commission might proceed for the collection of penalties.

The Commission has been advised that the company has corrected the discriminatory practices engaged in and among other things has filed certain corrective rates which it had previously been charging to some of its customers without filing. By thus filing said rates, it has made them applicable to all parties within the proper classification.

In the consummation of their contract both the city of Jellico and the utility company are desirous to compose and settle all disputes which may have arisen with reference to the affairs of the company at Jellico, so far as possible. The petitioners have accordingly requested the Railroad and Public Utilities Commission to withdraw the certificate of information relating acts of discrimination to the said district attorney, to the end that the cause filed in the chancery court of Campbell county may be finally dismissed.

The Commission is of the opinion that if it shall find that the sale and transfer of the assets of Tri-City Utilities Company to the city of Jellico is legal in all respects, is in the public interest and should be approved by the Commission, it has authority in

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order to facilitate the sale to withdraw the information which has been certified to the said district attorney.

Hence the issue for the Commission's decision is as to whether the public interest will be served by consummation of the sale of the facilities to the city of Jellico. For twenty months the Tri-City Utilities Company and the city of Jellico have been in competition in the community of Jellico under conditions which are not conducive to economy and efficiency of operations. The city has gained the bulk of the residential business but the company has been able to retain a valuable business with a number of commercial and industrial establishments, and also has a valuable business in Whitley county, Kentucky, which it has been serving without competition. Under the circumstances, the city of Jellico has not to the present been operating at a profit and it is doubtful if the utility company's operation has been as profitable as its rates and service warrant. The consummation of the sale will end a period of destructive competition which inures to the advantage of neither party involved. This is a public benefit of considerable consequence. Any benefit which might be derived from the imposition of penalties for the violation of the laws prohibiting discrimination is by comparison of minor importance. The utility company would in all probability controvert said charges of discrimination and the ultimate outcome is subject to some uncertainty.

Under the circumstances, it is the opinion of the Commission that the sale and transfer of the assets of Tri-City Utilities Company to the city of

Jellico as provided in the written contract exhibited to the Commission is in the public interest and should be approved. The Tennessee Public Utilities Act grants the Commission broad discretionary authority to be exercised for the benefit and welfare of the persons who use the essential utility services in the state. In the present case the public will be benefited by the withdrawal of the information heretofore related to the district attorney of Campbell county. The Commission is authorized to prescribe such rules and regulations with reference to its procedure, investigations and hearings as it deems best and it may exercise this procedure in such manner as to best serve the public policy of the state and the welfare of those of its citizens who use electric energy and the other utility services. Code of Tennessee, § 5399.

[7] It is accordingly the opinion of the Commission that in order to facilitate the sale of the Jellico properties by Tri-City Utilities Company to the city of Jellico the Commission should withdraw the information related to the district attorney for the nineteenth judicial district of Tennessee with the recommendation that the cause heretofore filed in the chancery court of Campbell county be finally dismissed by the entry of a consent decree, the costs to be taxed against the defendant company.

The withdrawal of the information and dismissal of the chancery cause is conditioned upon the final consummation and closing of the agreement which has been executed by and between the petitioners, and more particularly upon the obtaining by the

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trustees of Associated Gas and Electric Corporation of an order of the United States district court for the southern district of New York authorizing said trustees to acquiesce in the sale of the facilities by Tri-City Utilities Company.

It is therefore *ordered* by the Commission that the contract of July 15, 1943, by and between the Tri-City Utilities Company, a Kentucky corporation, and the city of Jellico, a municipal corporation of the state of Tennessee, for the sale of the electric distribution properties of said company to the said city of Jellico be and it hereby is approved.

It is *further ordered* that when the petitioners hereto shall have filed in this proceeding a certified copy of an order of the United States district court for the southern district of New York authorizing the trustees of Associated Gas and Electric Corporation to acquiesce in said sale, a certificate be forwarded to the district attorney of the nineteenth judicial district of Tennessee withdrawing the information related to said district attorney and which is the basis of a suit filed in the chancery court of Campbell county under the style of State ex rel. Dunlap v. Tri-City Utilities Co., and that the Commission consent to the entry of a decree in said cause finally dismissing same, the costs to be taxed against the defendant.

Order and Certificate

The order of this Commission, issued in this proceeding on July 24, 1943 (printed herewith) provided that, when the petitioners, Tri-City Utilities Company and city of Jellico,

Tennessee, shall have filed in this proceeding, Docket No. 2628, a certified copy of an order of the United States district court for the southern district of New York, authorizing the trustees of Associated Gas and Electric Corporation to acquiesce in the sale of the electric distribution properties of the Tri-City Utilities Company to the city of Jellico, a certificate of the Commission shall be forwarded to the district attorney of the nineteenth judicial district of Tennessee withdrawing the information heretofore related to him and which is the basis of a suit filed in the chancery court of Campbell county under the style of State ex rel. Dunlap v. Tri-City Utilities Co.

It was further provided in said order that, upon the filing of said certified copy in said proceeding, the Railroad and Public Utilities Commission would formally consent to the entry of a decree in the cause of State ex rel. Dunlap v. Tri-City Utilities Co. finally dismissing the same, the costs thereof to be taxed against the defendant Tri-City Utilities Company.

This is to certify that there has now been filed with this Commission in Docket No. 2628, in Re Tri-City Utilities Co. and city of Jellico, Tennessee, a certified copy of an order of the United States district court for the southern district of New York, entered in Docket No. 75635, in Re Associated Gas & E. Corp. the same being a proceeding pursuant to Chap. X of the Bankruptcy Act, and the date of said order being August 4, 1943, under which order the trustees of Associated Gas and Electric Corporation are authorized to acquiesce in the sale of the properties and elec-

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tric distribution facilities of the Tri-City Utilities Company to the city of Jellico.

It is further certified that the Railroad and Public Utilities Commission, having heretofore found that the public will be served and the public will be benefited by the sale of said facilities, as hereinabove stated; and that the public will likewise be benefited by the withdrawal of the

information heretofore related to the district attorney of the nineteenth judicial district of Tennessee, does hereby formally consent to the entry of a decree in the cause of State ex rel. Dunlap v. Tri-City Utilities Co. now pending in the chancery court of Campbell County, Tennessee, finally dismissing the same, the costs to be taxed against the defendant, Tri-City Utilities Company.

NEW YORK SUPREME COURT, APPELLATE DIVISION, THIRD DEPARTMENT

Premium Ice Company, Incorporated

v.

Milo R. Maltbie et al.

(266 App Div 455, 43 NY Supp(2d) 71.)

Evidence, § 22 — Report of Commission investigator.

1. Exclusion from evidence of a report made by investigators of the Commission, in a proceeding relating to rates for standby electric service, is not erroneous when the parties are permitted to call investigators who made the report to ascertain the facts, p. 184.

Rates, § 645 — Scope of proceeding.

2. The Commission, in determining the rates to which an electric utility is entitled for standby service to an ice company, is not required to broaden the scope of the hearing to include the reasonableness generally of utility rates, charges, rules, and regulations, p. 184.

[June 30, 1943.]

PROCEEDING to review Commission decision on rates of electric utility applicable to standby service furnished to ice company; determination confirmed. For Commission decision, see (1942) 43 PUR(NS) 196.

APPEARANCES: Saul Godwin, of New York city (Paul S. Lipson, of New York city, of counsel), for petitioner; Gay H. Brown, of Utica (George H. Kenny, of Albany, of counsel), for Public Service Commission; Whitman, Ransom, Coulson & Goetz, of New York city (Jacob H.

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Goetz and Robert H. Miller, both of New York city, of counsel), for respondent electric companies.

Before Hill, P. J., and Crapser, Bliss, Heffernan, and Schenck, JJ.

HILL, P. J.: Petitioner, a manufacturer of ice in the borough of Manhattan, and a customer of respondent, Consolidated Edison Company of New York, Inc., asked in this proceeding, brought under Art. 78 of the Civil Practice Act, that this court annul as arbitrary and discriminatory a decision and determination of respondent, the Public Service Commission, which canceled the rule and regulation filed by the Edison Company as a part of its rate schedule and substituted another rule and regulation. The controversy involves the rate which the Edison Company may charge for electrical energy in other than residential premises which is reserve or auxiliary to equipment performing the same function and which is so installed that it may be supplied with energy from another source whether electrically or mechanically produced. A "firm service rate" would be charged petitioner if all its compressors were operated by energy obtained from respondent, and under certain other conditions, not of importance on this review. The rate fixed by the rule has to do with the amount which may be charged for "segregated service" used by the consumer for "break down, reserve, or auxiliary purposes." The testimony shows that the petitioner's plant is equipped with four ammonia compressors, three driven by energy obtained from the Edison Company and the fourth by a Diesel

engine owned and operated by petitioner. All auxiliary equipment such as condensers, pumps, water pumps, cranes, etc., is electrically operated from the Edison Company's service. The compressors feed into a common ammonia system. The relative work done by the Diesel and the electrically driven compressors varies in accordance with the amount of ice sold. In the winter time the Diesel driven compressor alone is operated except when it is necessary to use those electrically driven at periods when more than the usual amount of ice is required. Under this plan the electric company is required to have energy available at all times to take over the operation of the plant at full capacity, while for months it may be that no demand will be made for electrical energy, as all necessary power will be derived from the customer-operated Diesel engine.

The Commission has determined the rate to which the utility is entitled for this standby service. Many factors enter into the determination. This court is not equipped to evaluate the cost of the items except as indicated by the proof offered by the Commission. No evidence was offered by petitioner.

Petitioner invited the Commission to broaden the scope of the hearing to include the reasonableness generally of the rates, charges, rules, and regulations permitted the respondent Edison Company, and in connection therewith offered in evidence a report made by two employees of the Commission. It was excluded, the Commission ruling "that Mr. Regan and Mr. Nexsen may be called by any party to the proceeding to testify as to facts personally known to each of

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them, but that they may not be called to give opinion testimony as to any matter to be determined by the Commission" and limited the scope of the hearing to the reasonableness of the rule and regulation first herein described. Some of the questions addressed by counsel to the hearing commissioner would be unusual if addressed to a judge in a law court. These carried an innuendo, if not a direct suggestion, that the Commission had considered as evidence a report or reports not in the record in formulating the rule.

[1, 2] The legislature created the Public Service Commission, now one of the most ancient bodies having what is generally called bureaucratic powers, with two functions, inter alia — one quasi-judicial, wherein the members pass upon prices to be charged for utility service and the reasonableness of rules and regulations governing the sale and distribution of items classified as public utilities; in the other capacity it controls and directs a large number of persons working as engineers, inspectors and the like who, with or without a complaint to the Commission, investigate to ascertain what is fair between vendor and vendee in a field particularly subject to monopolistic tendencies. The courts have determined long since that such a union of inquisitorial and judicial powers does not offend against the Constitution. Whether the combination is a happy one is open to question, but the objections, if any there be to the general plan, should not be addressed to the courts but to the legislature. The Commission in this matter is acting

under the Public Service Law, subdiv. 14, § 66. The proceeding could have been started by the Commission "upon complaint or upon its own motion." If begun upon its own motion in a field so vast as the rules, regulations and rates of the utilities of the state, a preliminary investigation would be required and proper. In an entirely different field, but with somewhat the same thought, a grand jury investigates prior to a trial, and the returning of an indictment raises no presumption of guilt. There was no error in excluding the report of the two investigators, indeed it would be difficult to understand under what theory the hearsay statements and conclusions would be competent, and the ruling of the Commission earlier quoted gave to all the parties the privilege to call those who made the report to ascertain facts. The conclusions to be drawn therefrom could have been developed by experts privately employed by the litigating parties. The Commission is not bound by technical rules of evidence (§ 20, Public Service Law), but the ruling did not offend against such rules and further, it seems sensible and wise that the body which is to draw the decisive conclusions not resort to expert evidence from its own staff. The petitioner herein is not aggrieved by the ruling. An inquiry as to the rates generally of this great utility would involve months of time and a staggering amount of money for expenses. Unless good cause therefor was shown, certainly the Commission was not required to grant the request of a customer who disapproves of the classification in which he finds himself.

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The decision should be confirmed,
with \$50 costs and disbursements.

Decision confirmed with \$50 costs
and disbursements. All concur.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Re Daley's Blue Line Transfer Company

[Assessment Docket No. 909.]

Commissions, § 58 — Assessment against motor carrier — Basis for assessment.

An objection to a Commission assessment against a motor carrier on the ground that it was based on the carrier's annual report containing interstate as well as intrastate revenues was overruled, where the carrier had disregarded the Commission's request for a proper statement of its revenues upon which the assessment could be based and the Commission had been required to estimate revenues on the basis of revenues received by other utilities.

Commissions, § 58 — Assessment against motor carrier — Basis.

Statement, in dissenting opinion, that the Commission, in estimating motor carrier revenues for assessment purposes, is limited to an estimate of gross intrastate operating revenues and that reasonable diligence must be exercised in arriving at such estimates, p. 188.

Commissions, § 58 — Assessment against motor carrier — Purpose of statute.

Discussion, in dissenting opinion, of the purpose of the assessment provisions of the Public Utility Law, p. 189.

Commissions, § 58 — Assessment against motor carriers — Guiding formula.

Discussion, in dissenting opinion, of the legislative formula for the levying and collection of assessments for regulatory purposes, p. 189.

(BUCHANAN, Commissioner, dissents.)

[July 6, 1943.]

OBJECTION to assessment against motor carrier for regulatory purposes; objection overruled.

By the COMMISSION: Pursuant to the provisions of § 1201(c) of the Public Utility Law, the Commission, after notice to Daley's Blue Line Transfer Co., scheduled a hearing on the objections filed to the 1939-40 general assessment, for April 29, 1943,

after a previous hearing had been canceled at the company's request.

The objector was given the opportunity to appear and be heard with reference to the objections filed. The hearing was held as scheduled, and from the record in that proceeding, we

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make the following findings of fact and conclusions of law:

On May 5, 1936, certificate of public convenience numbered A. 26684, Folder No. 4, was issued to Albert J. and Elmer Daley, trading as Daley's Blue Line Transfer Co.

Rule 8 of General Order No. 29, adopted by the Commission April 11, 1939, and effective July 1, 1939, requires under paragraph (a) "Every common carrier shall keep his or its books and accounts in accordance with such uniform system or systems as may be prescribed by the Commission, and shall file annual reports on the forms furnished and in the manner prescribed and file such other reports as the Commission may from time to time order and direct."

Under this rule the Commission requires that a report of gross intrastate operating revenues, for assessment purposes, be filed for each and every calendar year, or part of such year, so long as a common carrier holds a certificate of public convenience. On November 20, 1941, a report form for 1939-40 and an instruction sheet was mailed to Daley's Blue Line Transfer Co., at its last known address, 343 South Empire street, Wilkes-Barre, Pa., with instructions that the report of revenues for 1939-40 must be filed with the Commission on or before March 31, 1942. This filing period was later extended to June 30, 1942, and still later extended to September 5, 1942, when it was finally closed. Under an opinion of the Department of Justice, and later by an amendment of the law when such reports are not filed, the Commission is directed to estimate the gross intrastate operating revenue of the nonreporting utility.

On the failure of Daley's Blue Line Transfer Co. to file this report for 1939-40, its revenues were estimated as follows:

1939	\$144,267
1940	166,113

On January 12, 1943, under the provisions of § 1201(c) of the Public Utility Law, the Commission sent by registered mail to Daley's Blue Line Transfer Co. a bill numbered CR. 105139, in the amount of \$882.74, covering its pro-rata share of the assessment of the Commission's operating expenses for the periods from January 1, 1939, to December 31, 1939, and from January 1, 1940, to December 31, 1940, and on February 1, 1943, or within fifteen days of the receipt of the assessment, the company filed objections, whereby it became entitled to a hearing thereon.

The basis of the objections filed was that the assessment was computed on the basis of the revenue shown in the objector's annual reports; and that such revenue contained not only intrastate revenue, which is subject to assessment, but revenue from interstate hauling and from rigging work, neither of which is subject to the Commission's jurisdiction, and the revenue from which is not assessable. The objector claims that its assessable intrastate gross operating revenues for 1939 were \$6,504 and for 1940 were \$6,216.

As will be observed from the foregoing recital, objector disregarded our request for a proper statement of revenues upon which its assessment could be based, and it was necessary to estimate them. This estimate, together with reports received from utilities who met their obligations, and other

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estimates for those who did not, formed the basis for the long and involved calculations which ultimately resulted in the amounts assessed to all utilities. It seems to us that it is with particularly ill grace that objector now, after the assessment has been made and the bills issued, claims that our estimate, which its neglect forced us to make, is erroneous.

BUCHANAN, Commissioner, dissenting: The record in this case is scanty and somewhat confused. From it several clear facts are evident.

1. Albert J. Daley and Elmer Daley, trading and doing business as Daley's Blue Line Transfer (*a partnership*) hold a common carrier certificate at Docket A.26684, Folder 4, of the Pennsylvania Public Utility Commission for *intrastate* trucking operations but they have no interstate rights.

2. Daley's Blue Line Transfer Company (a corporation) holds an Interstate Commerce Commission common carrier certificate for *interstate* operations, but has no intrastate rights.

3. Daley's Blue Line Transfer (the partnership) allegedly failed to file with the Pennsylvania Commission a report of its gross intrastate operating revenues for the years 1939 and 1940, for assessment purposes under § 1201 of the Public Utility Law as amended (1941 P. L. 280), although allegedly requested to do so by the Commission under date of November 20, 1941,

which refusal or neglect was, according to the majority opinion, in violation of Rule 8 of General Order No. 29, Revised. For the purpose of this opinion, it will be considered that notice was given to and received by objectors and they neglected to reply although such matters are irrelevant and immaterial to the issue.

4. Although the 1939 annual report of the partnership, the intrastate operator clearly indicated on its face¹ that it covered *both interstate and intrastate* operations, and, although the 1940 report was filed by the corporation, which is not subject to P.U.C. jurisdiction, and otherwise indicated on its face² that it *included interstate revenues*, the Commission accepted the *gross combined interstate and intrastate operating revenue* figures therein set forth (1939—\$144,267 and 1940—\$166,113) as an *estimate* of the *gross intrastate operating revenue* specified as the basis for assessment in § 1201(b) of the Public Utility Law and on January 12, 1943, levied an assessment, based thereon, for the two years in a total amount of \$882.74.

5. Pursuant to statutory provisions of § 1201(c), within fifteen days after receipt of notice of the assessment and the amount thereof, objections were filed setting forth reasons why such assessment was considered to be erroneous, excessive, unlawful, and invalid, as follows:

- a. "Your assessment was apparent-

¹ The 1939 report on page 309, Account 5300, Schedule No. 344, covering "Operating Rent" sets forth rentals paid during 1939 for Receiving Terminals, Offices and Sleeping Rooms for Road Drivers in Hoboken, New Jersey and New York City; and on page 506 at Schedule 552, covering "Commodities Carried during the Year," it is stated "General

Commodities & HH Gd's (household goods) in Pennsylvania and General Commodities & HH Gd's interstate between New York city and Wilkes-Barre, Pa."

² 1940 annual report shows no return for partnership page 229, Account 2810, Schedule 282, but shows the interstate rentals of the 1939 report (*supra*) on page 309.

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ly made on the gross receipts shown on our annual revenue report."

b. "In the year of 1940 the gross income of intrastate trucking amounted to \$6,216."

c. "In the year of 1939 the intrastate Pennsylvania trucking revenue amounted to \$6,504."

By application of the statutory formula to objectors gross intrastate operating revenue figures as submitted and by a simple mathematical calculation, there would result a reduction in the assessment from \$882.74 to \$36.83, amounting to \$845.91 for the two years, a substantial amount.

6. The Commission after notice to the objector held a hearing at Harrisburg on April 29, 1943, at which testimony was taken on the part of the objector which completely substantiated the objections as filed. No testimony was offered on the part of the Commission nor was that of the objector disputed in any way.

With these facts and upon the closing of the testimony, the only issue before the Commission was the reasonableness and correctness of the assessments. The burden of proof under § 1201 of the Public Utility Law was upon the objector, and the determination of the costs and assessments by the Commission and the records and data upon which they are made, had to be considered *prima facie* correct.

Even though the basis of the Commission estimates were the annual reports, which must be considered *prima facie* correct, nevertheless on the face of them it is evident (*supra*) that *interstate revenues* were included in the gross revenue figure and the estimates must fall of their own weight because

the Commission is limited to a consideration of intrastate revenues only.

During the discussion of the case and in defense of the Commission's estimate, it was contended that, under the amendment of 1941 to § 1201 (1941 P.L. 280, Par. 1; 66 P. S. 1461), the Commission could "pick out of the blue sky any estimate of intrastate revenues" and upon that "blue sky" estimate the assessment could be levied and collected.

Such position is neither the law nor the fact. The estimate which the Commission is compelled to make is limited to an estimate of "gross intrastate operating revenues" and reasonable diligence must be exercised in arriving at such estimate. Where it clearly appears, as here, that the estimates include interstate revenues, such estimates do not comply with the law and *must* be rejected, else the Commission substitutes its arbitrary, administrative judgment for the orderly and equitable procedure established by law. Such arbitrary action is as intolerable and foreign to our democratic process as the infamous sneak attack at Pearl Harbor. One was accomplished through the restraints imposed by peace and the other would be accomplished through the statutory restraint imposed against immediate judicial review.

Simply because the statute postpones the judicial review to some indefinite future, any deliberate abuse of statutory requirements which compels lengthy litigation in order to achieve justice, such as "blue sky" estimates, must be likened to the ruthless and unconscionable exercise of brute strength and wanton lust which dictated the invasion of Poland, Czecho-Slovakia,

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Greece, China, Russia, the Philippines, et al., and *retribution is just as inevitable.*

The testimony shows that the greater part of the combined businesses of the partnership and corporation is *interstate* and that revenues of both were included in the annual reports. Not only does the Commission estimate of gross intrastate operating revenues fall of their own weight, but also, the actual revenues of the statutory requirement are established *beyond dispute* by testimony of objector's witness since it was received without objection and was not contradicted.

The majority order does not reject this testimony. Indeed it makes no finding sustaining the correctness nor reasonableness either of its own computation or that of the objector's instead it merely states that the objector had failed or neglected to file a statement of its 1939 and 1940 gross intrastate operating revenues which was not in issue and implies that the annual report figures are conclusive of such revenues by the mere filing thereof. The order, directing payment of the assessment as originally levied in the amount of \$882.74 and rejecting the offer of objector to pay the correct amount of \$36.83, in effect states that the amount to be paid is a penalty for failure to file one report and the improper filing of another, not an assessment "for the reasonable cost of regulating the respective groups."

The intent of the legislature in enacting the assessment provisions of the Public Utility Law is clearly expressed in § 1201(f) thereof. The object is to *apportion equitably* the reasonable cost of regulation, *not to penalize.*

The legislature enacted Art. XIII and particularly § 1301 thereof for such purposes and in so doing established adequate procedure and specific penalties against utilities and their officers and employees for violations of the law or the regulations or final orders of the Commission. But it did not intend that the purposes for which Art. XII was enacted, "Assessments," would ever be substituted for the purposes of Art. XIII "Penalties."

The question of whether objectors failed to file or filed improperly reports in violation of Rule 8 of General Order No. 29, Revised, turns on an entirely different set of facts than those admissible in the present proceeding, and involves an entirely different type of proceeding, evidence, decision, and judicial review than here.

Penalties may be imposed only after complaint and notice of the specific violation complained of, and after opportunity to be heard, with immediate right of appeal from arbitrary or capricious judgment. But as to assessments, the law prohibits any redress by way of judicial review until the amount determined by the Commission as the *reasonable and correct assessment* has been paid, because of the nature of the issue. The legislature certainly never contemplated any confusion of the two sections or it would have established like procedure for immediate judicial review to protect against arbitrary, bureaucratic abuse as is present here.

The legislative formula for the levying and collection of assessments for regulatory purposes is so simple and direct that it seems almost impossible to get so far away from it as the ma-

PENNSYLVANIA PUBLIC UTILITY COMMISSION

jority have in the instant case. It is as follows:

Every public utility is required under § 1201 to file, by March 31st of the year following the calendar year for which the assessment is to be levied, a statement of the "gross intrastate operating revenues" for the year to be assessed.³ Upon failure to file such return the public utility promptly becomes subject to two other provisions of the law: First, an estimate by the Commission of the *gross intrastate operating revenues* under § 1201(b); second, an action under § 1301 to inflict penalties for failure to file properly such report. By either method, the public utility is given an opportunity to be heard and to contest each matter, a basic constitutional right of due process. But the nature of the contest is different at each hearing. So far as imposing penalties is concerned any plausible excuse may be the basis for avoiding them and the gamut of excuses is almost without limit. In the matter of assessments, however, the scope of the testimony and determination of the Commission are limited to practically two questions:

1. What are the gross intrastate operating revenues?

2. What is the mathematical result of the application of the statutory formula thereto?

In this case while the testimony of objectors is clear, precise and uncontradicted on the two questions, the Commission makes no determination of the first issue and consequently the

mathematical computation in the second issue is without basis in fact. Such arbitrary action entitles the Commission to all of the innuendos and aspersions commonly attached to the appellation, "bureaucrats," but to none of its virtues.

On the basis of the record, I am forced to the following conclusions:

1. The gross intrastate operating revenues of Daley's Blue Line Transfer (a partnership), the common carrier certificated by this Commission, for the calendar years 1939 and 1940 subject to assessment are, respectively, \$6,504 and \$6,216.

2. The Commission estimates of such revenues of \$144,267 for 1939 and \$166,113 for 1940 include for the greater part thereof, interstate revenues of Daley's Blue Line Transfer Company (a corporation) not subject to this Commission's jurisdiction.

3. That the mathematical calculation of the proportion of Daley's Blue Line Transfer's gross intrastate operating revenues to the total of the motor carrier group for the years 1939 and 1940 results in assessments of \$22.36 and \$14.47, respectively, or a total for the two years of \$36.83 as opposed to \$882.74 as levied by the Commission, a difference of \$845.91. The factor used is .0034377648.

4. On the record and testimony in this case, the estimates by the Commission of gross intrastate operating revenues under § 1201(b) of the Public Utility Law were capricious, arbitrary, and unlawful. Such estimates must be reasonable and correct and result from a reasonably diligent effort

³ In this case, this provision did not even apply, because it became a requirement by amendment of July 8, 1941, P.L. 280, whereas the years in question here are 1939 and 1940.

RE DALEY'S BLUE LINE TRANSFER COMPANY

to ascertain actual revenues regardless of the amount of work involved.

5. Whether or not a report by objector was filed under Rule 8 of General Order No. 29, Revised, or the annual reports were filed improperly, are immaterial and irrelevant to the determination of the reasonableness and correctness of the assessment.

6. For the Commission to wilfully, deliberately, and knowingly levy a grossly excessive and exorbitant assessment ostensibly for regulatory expenses but also to punish objectors for violation of Commission regulations and orders, is reprehensible and unlawful. To inflict penalties, the Commission must meet the constitutional requirement of due process, particularly that of specific notice to the offender of the particular thing complained of with an opportunity to be heard and defend against such complaints.

7. The effect of the adjustment of this particular assessment to the total for the group is irrelevant and immaterial to the issue. The intent of the legislature and the effect of its legislation is to make certain that no member of a group shall be overassessed and

that each shall bear his equitable proportion of the whole expense of the group. Furthermore by reducing the assessment to equalize the burden of this objector no problem is presented as to the balance remaining to be charged back to the motor carrier group. Such balance can be charged off either to the general appropriation or, carried over to the following year or next assessment. While I am sympathetic with the Commission staff in the additional burden placed on it by the neglect or failure of public utilities to observe Commission regulations, it must be remembered that such practices will always be present and the only method by which they can be kept at a minimum is by using the penalty section of the Public Utility Law more often, against the big as well as the little fellow. Enforcement of the law can never be accomplished by arbitrary, capricious, and unjust administration of it.

8. The Commission should request the legislature for a specific appropriation in the next biennium to meet the inevitable refund which must result from court order on final hearing in this matter.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION

City of Pittsburgh
v.
Duquesne Light Company

[Complaint Docket No. 13683.]

Rates, § 78 — Jurisdiction of Commission — Service to municipality.

The Commission has jurisdiction over the reasonableness and application of rates for electric service to municipally owned facilities.

(SIGGINS, C., dissents.)

[August 17, 1943.]

PETITION to dismiss proceeding relating to rates for electric service to municipally owned facilities; petition denied.

By the COMMISSION: This proceeding was initiated by a petition for establishment of rates covering electric service to municipally owned facilities on certain bridges, viaducts, and highway projects in the city of Pittsburgh. Duquesne Light Company has filed a demurrer and petition to dismiss, and both parties have submitted briefs thereon.

Various issues are discussed in the briefs of the parties, but the fundamental issue appears to be whether or not a municipality is entitled to a lower rate for municipal lighting by reason of its ownership and maintenance of the lighting facilities. Respondent now has on file rates covering municipal lighting service to certain municipally owned facilities (Tariff Electric No. 9, Supplement No. 11, Rate "S"), and we understand the city to

assert that the rates are unreasonable because they give no credit for city ownership or maintenance, being the same whether the utility or the city installs, owns, or maintains the facilities. Determination of the issue of reasonableness of existing rates either in amount or application is a matter fully within our jurisdiction; therefore,

Now, to wit, August 17, 1943, it is ordered:

1. The demurrer and petition to dismiss filed by Duquesne Light Company, respondent, are denied.

2. Respondent shall file its answer on the merits within fifteen days after service upon it of this order.

3. The case shall be scheduled for hearing in due course.

The Chairman voted in the negative.



REPAIRING?
LEAK SURVEY?
MAIN CLEANING?
A NEW WELL?
A NEW PUMP?
TANK PAINTING?

*How many post-war projects
can you think of
That will pay?*

Quite a number . . . but in the light of the revenue that it will return to the Water Company, a Meter Testing Program can easily be one of the most profitable. It will require the least amount of capital expenditure, there is plenty of experience on which to draw for information and it can be put into action quickly.



Trident representatives will be glad to help you make your plans now and, when the time comes, to assist in carrying them out. As a matter of fact, it would even pay you to get started immediately, considering that the result of the savings would definitely benefit the war effort.

NEPTUNE METER COMPANY • 50 West 50th Street • New York 20, N. Y.

Branch Offices in CHICAGO, SAN FRANCISCO, LOS ANGELES, PORTLAND, ORE.,
DENVER, DALLAS, KANSAS CITY, LOUISVILLE, ATLANTA, BOSTON.

Neptune Meters, Ltd., Long Branch, Ont., Canada

75

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Industrial Progress

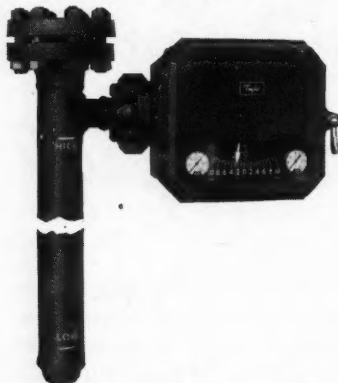
Selected information about products, supplies and services offered by manufacturers. Also announcements of new literature and changes in personnel.



Equipment Notes

New Buoyancy-type Instrument

With the announcement of its new Level-Buoy, the Taylor Instrument Companies of Rochester, N. Y., adds to its line a buoyancy-type instrument which both controls and indicates liquid level. The new instrument employs the Taylor Fulscope control mechanism with either completely adjustable sensitivity for smooth throttling level control, or automatic reset for averaging of liquid level with a minimum disturbance to the process.



Controls and Indicates Liquid Level

A torque tube transmits the level changes to the instrument mechanism. This eliminates a stuffing box with its need for lubrication or packing and gives a closed system which eliminates leakage. The torque tube is interchangeable with the ones used in the Taylor Aneroid Manometer which is a real advantage to instrument users in minimizing inventories of spare parts. There are no internal pivots to cause friction or wear.

The Level-Buoy handles liquids with specific gravities between .2 and 2.0. It is available in 14 in., 32 in., 60 in., 72 in., and 120 in. ranges.

"MASTER*LIGHTS"

- *Portable Battery Hand Lights.*
- *Repair Car Roof Searchlights.*
- *Hospital Emergency Lights.*

CARPENTER MFG. CO.

197 Sidney St., Cambridge, Mass.

"MASTER*LIGHT*MAKERS"

Master Control Switch for Heavy Duty Service

A new master control switch for heavy-duty service is announced by the General Electric Company. Designated Type SB-9, it is for use wherever repetitive operations of electrically operated devices run into many thousands per week.

The new switch can be mounted on panels varying in thickness from $\frac{1}{8}$ in. to 2 in. It is rated at 600 volts, 20 amperes continuous, or 250 amperes for three seconds. Its interrupting rating is dependent upon the voltage and character of the circuit, and upon the number of contacts arranged in series. A table of interrupting ratings, as well as a detailed description of the Type SB-9 switch and its features, is contained in Bulletin GEA-4114, available on request to General Electric, Schenectady, New York.

Catalogs and Bulletins

American-Marietta Issues New Catalog

The Valdura line of heavy duty industrial maintenance paints are now listed in the new catalog just issued by the American-Marietta Company, 43 E. Ohio Street, Chicago.

Fully illustrated, the catalog provides application suggestions, product descriptions and technical data in complete detail. Attractively printed in two colors, it is easily handled and filed.

Proportioning Equipment Described

The Cochrane Corporation, 17th and Allegheny Avenue, Philadelphia 32, Pa., announces the publication of Cochrane Publication 2985-A which describes a simple, but accurate, method of proportioning sulphuric acid to water supplies.

The publication may be had upon request to the Cochrane Corporation.

Pressure-Treated Wood Booklet

Uses of pressure-treated lumber in the utility field comprise one section of a new book on preserved wood just issued by Koppers Company, Wood Preserving division, which is offered as a guide in material selection for utility engineers, contractors and maintenance superintendents.

A special section of the book, "Economical and Permanent Construction with Pressure-Treated Wood," explains the several processes by which lumber is treated to protect it against

Mention the FORTNIGHTLY—It identifies your inquiry

DAVEY TREE TRIMMING SERVICE



1846 1923

JOHN DAVEY
Founder of Tree Surgery

Tailored Trees

Davey men know the ins and outs of top-clearance, side-clearance, drop-crotching and all the rest. If you want some special type of trimming, they can do it expertly. Try Davey service.

Tree interference may aid the Axis

DAVEY TREE EXPERT CO. KENT, OHIO

DAVEY TREE SERVICE

Maximum H₂S removal per lb. of Oxide!

● Lavino Activated Oxide is made specifically for maximum sulphur removal... is not just a "satisfactory" purifying medium merely by virtue of incidental properties, but is made especially for maximum capacity and activity, maximum trace removal and shock resistance. As such, we do not believe you will find Lavino Activated Oxide has any close rival—comparing cost, comparing performance and comparing savings.

We'll be glad to tell you all about its remarkable record; just write a note on your letterhead to

E. J. Lavino and Company

1528 Walnut St.
Philadelphia
Penna.

Try
**SATISFY
YOURSELF...**



C-D/Fog seems to freeze fire with a chilling blanket of carbon dioxide. It is safe and efficient on *all* fires including electrical, oil, gasoline, and chemical.

C-D/Fog leaves no after-fire mess. Carbon dioxide is a vapor, odorless, tasteless, harmless. It is equally effective in hot weather and at sub-zero temperatures.

C-D/Fog is a product of The General Detroit Corp., manufacturers of chemical fire extinguishers and allied apparatus since 1905—producers of S.O.S. Fire Guard, Alaskan, Floatome, and other famous brands. General Detroit's known record in quality mass production is your assurance of prompt delivery for essential requirements.

"Fire Protection is Victory Effort"

THE GENERAL DETROIT CORP.

Former Name The General Fire Truck Corp.

NEW YORK

DETROIT

CHICAGO

West Coast Affiliate: The General Pacific Corp., Seattle, Los Angeles, San Francisco.
Distributors in all principal cities.

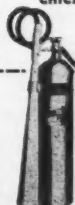
THE GENERAL DETROIT CORP.

2228 East Jefferson, Detroit, Mich.

Please rush details on *C-D/Fog* and others in your complete line of fire extinguishers.

Name _____

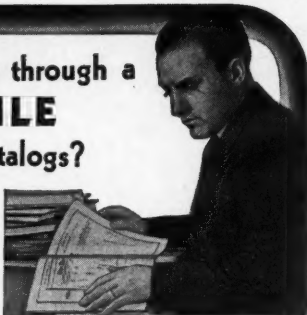
Title _____



Tear out this simplified coupon and attach to your letterhead.

Why dig through a PILE of Catalogs?

Find the
Fitting
you need,
quickly—



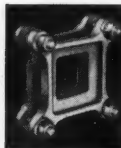
in the **COMPLETE** line

If you have a Penn-Union Catalog, you can instantly find practically every good type of conductor fitting. These few can only suggest the variety:



Universal Clamps to take a large range of conductor sizes; with 1, 2, 3, 4 or more bolts.

L-M Elbows, with compression units giving a dependable grip on both conductors. Also **Straight Connectors** and **Tees** with same contact units.



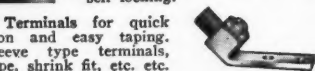
Bus Bar Clamps for installation without drilling bus. Single and multiple. Also bus supports—various types.

Clamp Type Straight Connectors and **Reducers**, Elbows, Tees, Terminals, Stud Connectors, etc.



Jack-Knife connectors for simple and easy disconnection of motor leads, etc. Spring action—self locking.

Vi-Tite Terminals for quick installation and easy taping. Also sleeve type terminals, screw type, shrink fit, etc. etc.



Splicing Sleeves, Figure 8 and Oval, seamless tubing—also split tinned sleeves. High conductivity copper; close dimensions.

Preferred by the largest utilities and electrical manufacturers—because they have found that "Penn-Union" on a fitting is their best guarantee of Dependability. Write for Catalog.

PENN-UNION ELECTRIC CORPORATION
ERIE, PA. *Sold by Leading Jobbers*

PENN-UNION

CONDUCTOR FITTINGS

Catalogs & Bulletins (Cont'd)

decay, marine borers, termites, acids and fire.

Pictured are a number of typical installations in the utility field, including pressure-creosoted transformer stations, and telephone and telegraph lines for over-water and land lines. There also is a reference list of recommended uses of pressure-treated lumber in the utility and other fields.

"Less power is lost, 'flash-over' is reduced, and there is less accident hazard," the publication states, "where creosote-pressure-treated poles are used for electric lines, because the creosote maintains the poles' resistance to water absorption in wet weather."

A copy of the book may be obtained by writing to Koppers Company, Wood Preserving division, Pittsburgh.

Pipe and Tube Bending Handbook

The Copper & Brass Research Association announces the publication of a new and complete treatise showing methods and devices for bending pipes and tubes of copper and its alloys. This book contains 80 pages of text with 113 figures and illustrations including 35 full pages of unit weights of tubes of different alloys with varying diameters, wall thicknesses and shape, as well as pertinent information on the chemical and physical properties of such pipe material.

Copies of this treatise may be obtained from the association, 420 Lexington Avenue, New York 17, N. Y.

G-E Issues New Bulletin

Electronic heaters for heating metals are featured in a new, illustrated 8-page bulletin (GEA-4076) recently issued by the General Electric Company.

The publication describes the electronic method of heating metals, emphasizes its simplicity, and gives in detail the specifications of both the 5-kilowatt and the 15-kilowatt, 550-kilocycle electronic heaters.

Also included in the bulletin are illustrations of many important small parts which may be brazed, soldered, or surface hardened by electronic heating.

Manufacturers' Notes

Joseph B. Grinnell Joins Cochrane Steam Specialty Co.

Cochrane Steam Specialty Company, 80 Federal Street, Boston, Mass., announces the addition of Joseph B. Grinnell to their organization.

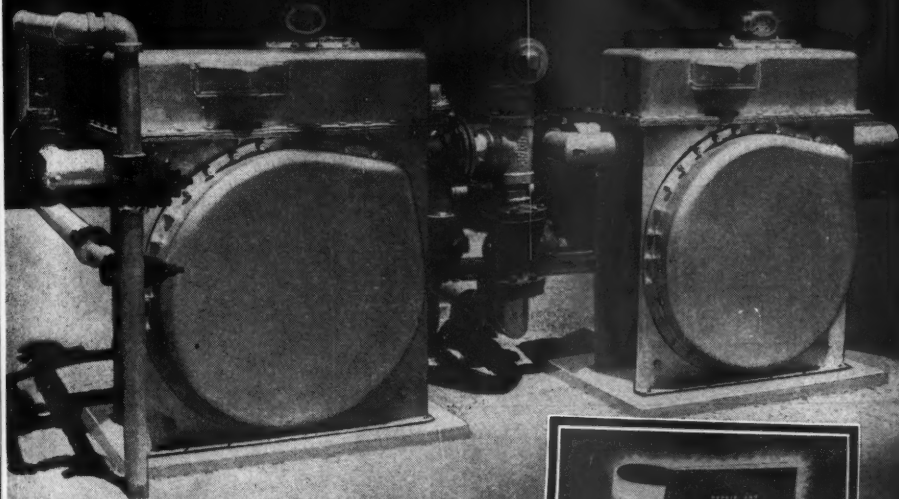
Mr. Grinnell is a former associate of The Whitty Manufacturing Co., manufacturers of domestic and industrial stokers, and has also been connected with the electrical staff of one of the large Army installations in New England.

The Cochrane Steam Specialty Company represents in New England the Cochrane Corporation, the Hays Corporation, the Reliance Gauge Column Company, the Northern Equip-

Mention the FORTNIGHTLY—It identifies your inquiry

GAS FOR THE ESSENTIAL FOOD INDUSTRY

Measured by EMCO METERS



Two EMCO No. 5 Pressed Steel Meters installed on Henderson Valve controlled lines accurately measure the gas consumed by a large Southern California packing house.

It is freely predicted that food will win the war—and write the peace! Packing houses and canners are now processing vast quantities of foodstuffs that will be used to feed both our armed forces and the peoples and armies of our Allies. Yes, food preservation has entered the war. With our huge available reservoir of natural resources, it will become increasingly important as global strategy is unfolded.

Gas, the clean, convenient, economical fuel, is aiding immeasurably in the various processes of food packing. In order that gas may be conserved and utilized to the best advantage, it must be delivered to the burners at a constant pressure and accurately measured. EMCO Meters and Regulators have been installed by many utilities on lines serving the food packing industry to accomplish this purpose.

BACK THE ATTACK WITH WAR BONDS

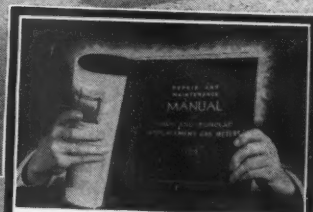
PITTSBURGH EQUITABLE METER COMPANY

BOSTON BROOKLYN COLUMBIA HOLLISTON CHICAGO KANSAS CITY NATIONAL METER DIVISION, Brooklyn, N. Y.

MERCO NORDSTROM VALVE COMPANY

Main Offices, Pittsburgh, Pa.

LOS ANGELES SAN FRANCISCO MEMPHIS SEATTLE NEW YORK TULSA



REQUIRED READING

.. IT'S FREE—yours for the asking! This 80-page manual, profusely illustrated, describes in detail the proper repair and proving procedure for all sizes of EMCO and Ironclad Meters. Under present day conditions this book is required reading for everyone concerned with the measurement of gas. Write for your copy today.

Manufacturers' Notes (Cont'd)

ment Company, The Roto Company, the Wheelco Instruments Company, the Buffalo Meter Company, the American Arch Company, the Taylor Instrument Company, the Vulcan Soot Blower Corporation, and the Fairfield Engineering Company.

Organizational Changes Announced By Copperweld Steel

In recent organizational changes, the Copperweld Steel Company, Glassport, Pa., announced the appointment of Wm. W. Ege as general manager of sales succeeding W. J. McIlvane, now executive vice president. Mr. Ege was formerly western sales manager with headquarters at Chicago.

Paul Van Wagner, at present vice president in charge of export sales, is succeeded by Henry Oberle, who assumed the duties of eastern sales manager. Prior to his recent appointment, Mr. Oberle was with the Queensborough Gas and Electric Company.

P. A. Terrell left the Washington Office to take up his new duties as assistant to the executive vice president in Glassport.

Erich G. Elg was assigned to the position of western sales manager, succeeding Mr. Ege.

Range Questionnaire

A questionnaire prepared by the General

DICKE TOOL COMPANY

DOWNERS GROVE, ILL.

Manufacturers of

Pole Line Construction Tools

They're Built for Hard Work

Electric Company's Consumers Institute concerning the kind of postwar range they want has been mailed to 25,000 families, according to C. A. Brewer, manager of Distribution Services of General Electric's Appliance and Merchandise Department.

The questionnaire is in the form of a two-color booklet and allows the future buyers to determine just what type of a postwar range will be manufactured.

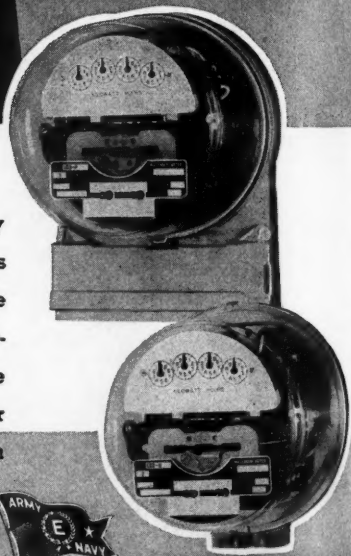
"Squeeze-Grip" Adopted by United States Navy Bureau of Ships

The "Squeeze-Grip" type valve for hand-type carbon dioxide fire extinguishers, originated and developed by the C-O-Two Fire Equipment Company, Newark, N. J., has been adopted as standard by the U. S. Navy Bureau of Ships, according to an announcement currently released by the C-O-Two Company.

(Continued on page 42)

★ THE Future OF MODERN METERING

THE cooperation of the electric utility industry with the watt-hour meter manufacturers has kept the design and development of the modern watt-hour meter well ahead of metering requirements. Thanks to this cooperative spirit, watt-hour meters will again play their important part in system modernization when normal times are once more restored.



SANGAMO ELECTRIC COMPANY

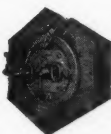
SPRINGFIELD - ILLINOIS

NOV. 11, 1943

Mention the FORTNIGHTLY—It identifies your inquiry

WASTE IS SABOTAGE!

ARE YOU DOING ALL YOU CAN TO AVOID IT IN YOUR BOILER PLANT?



Fuel is a vital weapon of war. It is imperative that boiler plants fired with fuel oil, transfer every last heat unit to useful power or heat.

To make sure that your heat or power plant is delivering all the steam of which it is capable with the least possible fuel consumption . . . check your operation against the ten points listed opposite.



TODD SHIPYARDS CORP.

TODD COMBUSTION DIVISION

601 West 26th Street, New York 1, N. Y.

NEW YORK MOBILE NEW ORLEANS GALVESTON
SEATTLE BUENOS AIRES LONDON

✓ All mechanical parts of burners should be kept clean and in good operating condition. Worn parts should be promptly replaced. Keeping equipment in good condition will save you many times over the cost of replacements.

✓ Temperature of oil supplied to burners should be watched carefully. Bunker "C" or No. 6 oil should be supplied to burners at a viscosity of 150 SSU for best atomization.

✓ Atomizers should be properly adjusted for best position with relation to air register throat.

✓ No more air than is absolutely necessary for complete combustion of the fuel without objectionable smoke should ever be supplied to the burners. If at all possible a recording flue-gas analyzer should be installed. If a recording analyzer is not installed, frequent analysis of combustion gases should be made with a hand analyzer.

✓ The fire side and water side of boiler surfaces should be kept clean, as soot on the first and scale on the second will reduce boiler efficiency. A definite schedule for cleaning tubes should be established.

✓ Uptake gas temperature should be checked against boiler manufacturer's guarantees. Too high a temperature in the uptake is usually an indication of a dirty boiler.

✓ Boiler baffles should be maintained in good condition. Leakage through baffles will allow partial short-circuiting of the gases, which will also cause a high exit gas temperature.

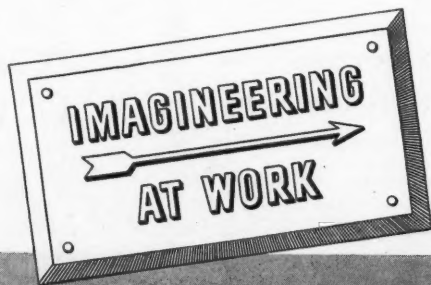
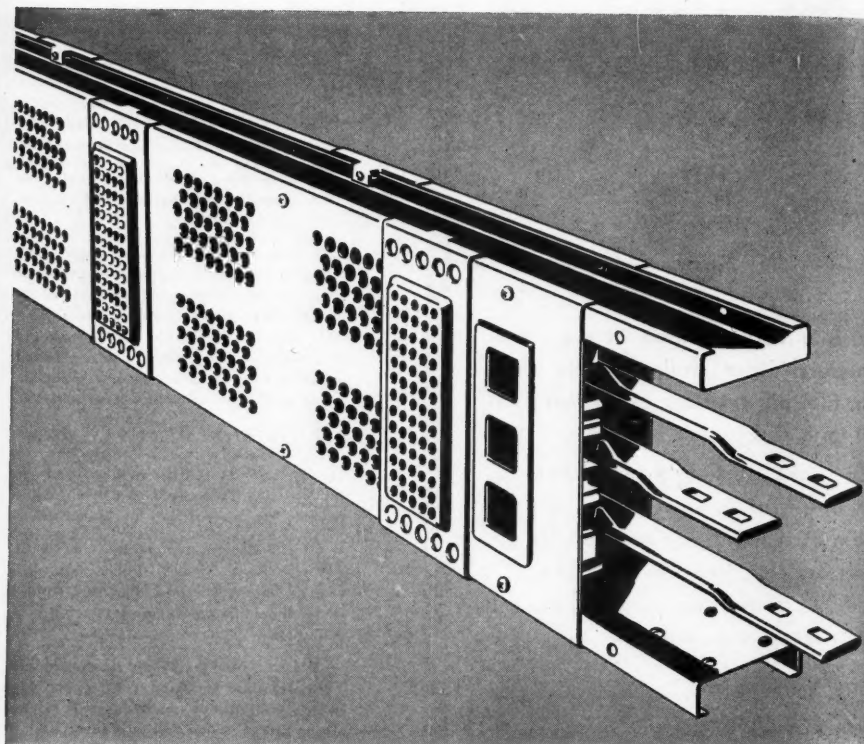
✓ Boiler settings, tube doors, explosion doors and boiler entrance doors should be kept airtight. Infiltration of air through any of these parts causes a serious loss in efficiency.

✓ Test checks should be made frequently on the overall efficiency of the boiler plant.

✓ Auxiliary equipment such as feed water heaters, pumps, etc., should be maintained in the best possible condition.

TODD BURNERS ★ ★ ON THE FIRING LINE OF AMERICA'S WAR PRODUCTION FRONT

A WARTIME IMAGINEER



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Nov
This
leadin
saves
heat t
bus c
for eq
housin
metal
This
what v
engine
channe
a "sul
effect
Now
"Make

TI

ER THOUGHT THIS ONE UP

This bus duct, a wartime product of a leading electrical goods manufacturer, saves bus bar material by permitting heat to be dissipated faster; smaller bus cross sections can be employed for equal ratings. And it saves on the housing material by using perforated metal instead of solid sheet.

This is an excellent example of what we mean by *Imagineering*. Some engineer departed from standard channels of thinking, and produced a "substitute" which may have its effect on future construction.

Now, when postwar designers say, "Make both the bus bar and the

housing of Alcoa Aluminum," that will be plain, good *Engineering*. The weight savings effected by building with aluminum means less burden to be carried by supports. Aluminum bus bars have ample current-carrying capacity and aluminum housings provide additional electrical advantages.

Prewar power lines of A.C.S.R., Alcoa Aluminum bus bars and housings, are serving thousands of war industries—visible evidence that it pays to Imagineer with aluminum. ALUMINUM COMPANY OF AMERICA, 2134 Gulf Bldg., Pittsburgh, Penna.

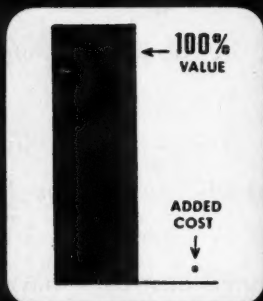
ALCOA



A·C·S·R

ALUMINUM CABLE STEEL REINFORCED

SO MUCH FOR SO LITTLE



PAPERS made from 100% new white cotton cuttings save critical war materials. Yet the most durable L. L. Brown ledgers*, instead of ordinary papers, add less than 1% to accounting costs, but guarantee 100% protection—utmost resistance to wear. Ask your printer for samples of the following:

L. L. BROWN RECORD PAPERS

100% New Rag Fibres

* L. L. BROWN'S LINEN LEDGER

* ADVANCE LINEN LEDGER

FORWARD LINEN LEDGER

85% New Rag Fibres

L. L. BROWN'S FINE

75% New Rag Fibres

GREYLOCK LINEN LEDGER

50% New Rag Fibres

ESCORT LEDGER & MACHINE POSTING

* Permanent Grades New White Rag

L. L. BROWN PAPER CO.
ADAMS MASS.



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Manufacturers' Notes (Cont'd)

The valve has also passed tests of the U. S. Bureau of Standards and is on the approved listing of the Coast Guard Merchant Marine Committee for use on passenger and cargo vessels in accordance with U. S. Senate Report No. 184.

Plans Underway for Increased CP Gas Range Promotion

Plans for increased promotion of Certified Performance Gas Ranges in 1944 to assist gas utilities and dealers to build postwar business were announced by Lloyd C. Ginn, chairman of the CP Sales Management Committee of the Association of Gas Appliance and Equipment Manufacturers, at the American Gas Association annual convention in St. Louis. The 1944 program will include trade paper promotion, a nation-wide newspaper campaign, direct mail and point of sale material aimed to assist dealers and gas utilities obtain advance orders for postwar deliveries.

Results of the 1943 program were gratifying, Mr. Ginn reported. Mats supplied to dealers and gas utilities appeared in more than 889 newspapers in thirty-eight states with an estimated total circulation of twenty million.

Unique in the home appliance field, gas ranges carrying the CP seal, are made to meet uniform high cooking performance standards set by home service directors and engineers of gas range manufacturers and the American Gas Association Specifications for postwar CP gas ranges were discussed by the CP manufacturers in St. Louis.

Double Home Consumption of Electricity Forecast after War

Home consumption of electrical power likely will at least double its present rate during the postwar era, according to a housing executive of the Westinghouse Electric and Manufacturing Company.

This is indicated because of the flexibility, low cost and certain abundance of electricity for home uses and the fact that new homes will be completely electrical, Irving W. Clark, manager of the Westinghouse Better Homes Department, said in a speech to the Missouri Valley Power Association meeting at Kansas City, Mo.

It is reasonable to project that the national average annual kilowatt hour consumption of electrical energy, per family unit, may increase as much as 2 or 2½ times its present rate, according to Mr. Clark.

T. O. Eaton Appointed Sales Manager

T. O. Eaton has been appointed manager sales, power transformer section, at General Electric's Pittsfield Works, according to an announcement by L. R. Brown, manager of the transformer division, central station divisions.

E. D. Monk, Mr. Eaton's predecessor, who has been with the company 34 years, will continue as a member of the section for consultation and special duties.

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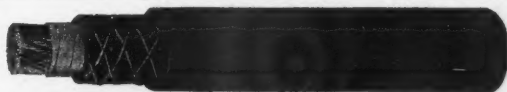
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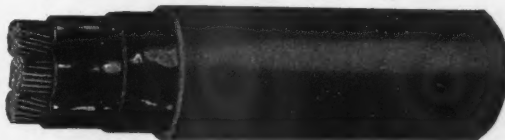
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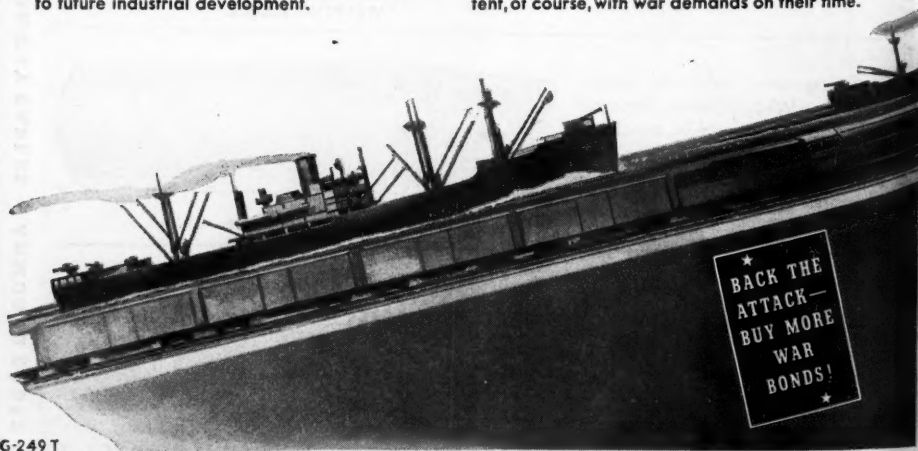
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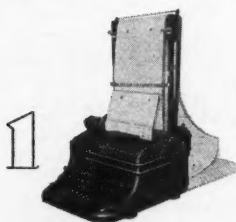
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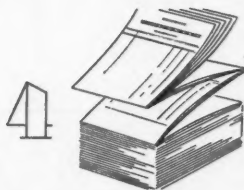
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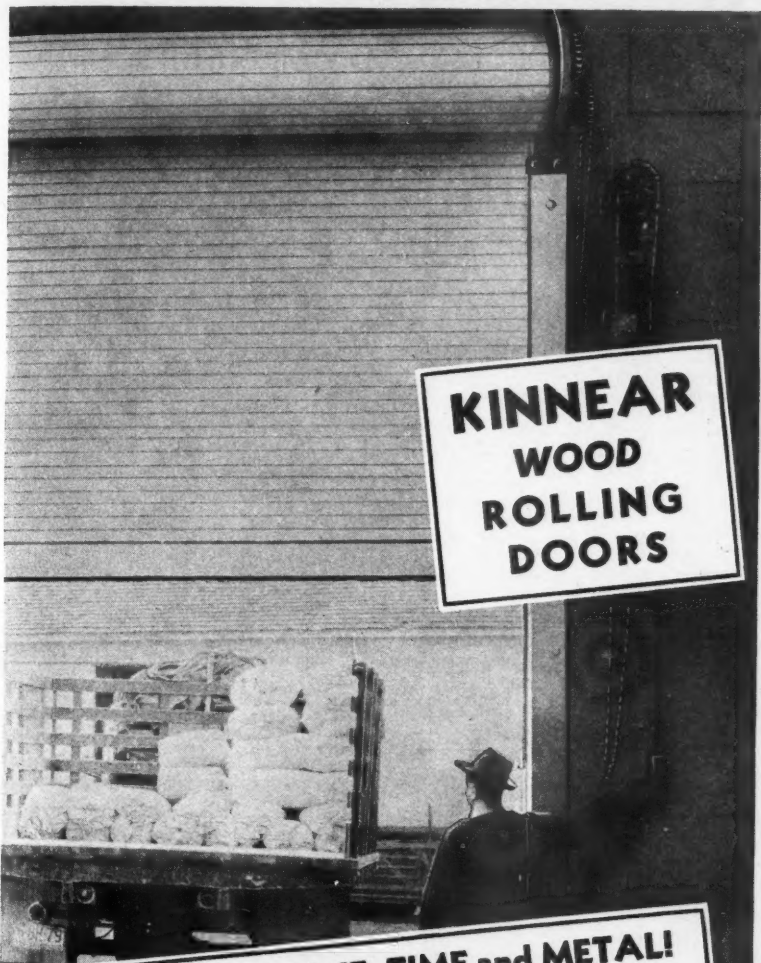
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